THE

JUSTICE of the PEACE,

AND

PARISH OFFICER.

BY RICHARD BURN, CLERK;

One of His MAJESTY's Juſtices of the Peace for the County of WESTMORLAND.

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Poor.

CONCERNING the binding and ordering of parish and other apprentices, see title **Apprentices.**

Concerning the filiation and maintenance of baſtard children, see title **Baſtards.**

Concerning the ordering of ſervants, and other workmen and labourers, see title **Servants.**

For theſe do fall in with this title, no further than as they happen to become poor: Upon which account, their ſettlements are here treated of; but nothing otherwiſe in particular concerning them.

After having premiſed one general clauſe in the ſtatute of the 17 *G.* 2. *c.* 38. *ſ.* 4. which ſeems to affect the whole law relating to this title, to wit, That *if any perſon ſhall be aggrieved by any thing done or omitted by the churchwardens and overſeers, or by any juſtice of the peace, he may, giving reaſonable notice to the churchwardens or overſeers, appeal to the next general or quarter ſeſſions, where the ſame ſhall be heard and finally determined; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next quarter ſeſſions; and the court may award reaſonable coſts to either party, as they may do by the* 8 & 9 W. *in caſe of appeals concerning ſettlements*; (This being premiſed) I ſhall treat of this extenſive title in the following order: That is to ſay,

I. Concerning the appointment of overſeers, with their duty thereupon.
II. Of ſettlements.
III. Of removals.
IV. Of the poor rate, and other helps towards their relief.
V. Of the relief and ordering of the poor.
VI. Of the overſeers account.
VII. Penalty of overſeers for the neglect of their duty.

VIII. Indemnity of overſeers in the performance of their duty.

I. Appointment of overſeers, with their duty thereupon.

Appointment of overſeers in pariſhes and townſhips.

1. *The churchwardens of every pariſh, and four, three, or two ſubſtantial houſholders there, as ſhall be thought meet, having reſpect to the greatneſs of the pariſh, to be nominated yearly in* Eaſter *week, or within one month after* Eaſter, *under the hand and ſeal of two or more juſtices of the peace in the ſame county, whereof one to be of the* quorum, *dwelling in or near the pariſh or diviſion, ſhall be called overſeers of the poor of the ſame pariſh.* 43 El. c. 2. ſ. 1.

And whereas the inhabitants of Lancaſhire, Cheſhire, Derbyſhire, Yorkſhire, Northumberland, *the Biſhoprick of* Durham, Cumberland, *and* Weſtmorland, *and many other counties in* England *and* Wales, *by reaſon of the largeneſs of the pariſhes, cannot reap the benefit of the ſaid act of the* 43 El. *it is enacted, that all and every the poor, needy, impotent, and lame perſons, within every townſhip or village within the ſeveral counties aforeſaid, ſhall be maintained, provided for, and ſet on work, within the ſeveral and reſpective townſhip and village, wherein he ſhall inhabit, or wherein he was laſt lawfully ſettled; and there ſhall be yearly choſen and appointed two or more overſeers, within every of the ſaid townſhips or villages reſpectively.* 13 & 14 C. 2. c. 12. ſ. 21.

And *if any overſeer ſhall die, or remove, or become inſolvent, before the expiration of his office; two juſtices (on oath thereof made) may appoint another in his ſtead.* 17 G. 2. c. 38. ſ. 3.

And *if in any place no overſeer ſhall be appointed, every juſtice of the diviſion ſhall forfeit* 5l. *to the poor of ſuch place, to be levied by the churchwardens and overſeers or one of them, by diſtreſs, by warrant from the ſeſſions.* 43 El. c. 2. ſ. 10.

Of every pariſh] *E.* 8 *G. K.* and the inhabitants of *Rufford.* A *mandamus* was directed to the juſtices of the peace of the county of *Nottingham*, reciting that within the ville of *Rufford*, in the foreſt of *Sherwood*, there are divers ſubſtantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens or overſeers to make a rate, and that there are poor unprovided for; therefore it commands them to appoint overſeers. They return that the ville of *Rufford* is part of no pariſh, but time out of mind has been extraparochial without church, chapel,

chapel, or parochial rights, and that there never have been any overſeers of the poor; and for that cauſe they cannot appoint. And there having been only an extrajudicial opinion of the court, in the caſe of *Dolting* and *Stokeland*, *H.* 11 *An.* that overſeers of the poor might be appointed in an extraparochial place; the court directed an argument, that the point might be ſolemnly determined. And after argument and conſideration of all the ſtatutes relating to the poor, the court were of opinion, that the powers given by the 43 *El.* to be executed in pariſhes, were by the 13 & 14 *C.* 2. extended to all townſhips and villages, whether parochial or extraparochial; that although moſt of the foreſts in *England* are extraparochial, yet notwithſtanding they ought to maintain their own poor; and conſequently overſeers might be appointed: for which purpoſe in this caſe a peremptory *mandamus* was awarded. *Str.* 512. 5 *Mod.* 273.

For the ſtatute directeth overſeers to be appointed within the ſeveral townſhips and villages within the ſeveral *counties* (without ſaying, within the ſeveral *pariſhes* in the ſaid counties); ſo that if it is a townſhip or village, and ſuch townſhip or village is within the *county*, it ſeemeth not to be material whether it is within any *pariſh* or not.

But a townſhip or village it muſt be. As in the caſe of *K.* and the inhabitants of *Welbeck* in the county of *Nottingham*, *M.* 14 *G.* 2. A *mandamus* was granted, ſuggeſting that there are ſeveral houſholders and farmers inhabiting and reſiding within the village of *Welbeck*, able to provide for the poor; and therefore commands the juſtices to appoint overſeers of the poor. To this it is returned, that *Welbeck* is extraparochial, and is not, nor ever was reputed to be a village or townſhip, and therefore they cannot appoint any perſons to be overſeers. And upon argument this was held to be a good return. For though it doth not anſwer the ſuppoſal of the writ, as to there being ſeveral ſubſtantial houſholders and farmers; yet it anſwers the point in the 13 & 14 *C.* 2. *c.* 12. by ſaying it is no townſhip or village, or reputed as ſuch: and it is to ſuch places only that we can ſend a writ. *Str.* 1143.

And the like had been adjudged before, in the caſe of *Denham* and *Dalham*, *H.* 8 *G.* 2. And of *Stoke Prior* and *Grafton*, *E.* 10 *G.* 2. In which caſe of *Denham* and *Dalham*, it was adjudged, that *Southwold* an extraparochial place in the county of *Suſſex*, conſiſting of two houſes and 300 acres of land, was not a place liable to maintain its own poor, becauſe it had not the reputation of a ville, and two houſes were not ſufficient to make it ſuch; but that

there ought to be ſeveral houſes and neighbours, and they ſhould have a petty conſtable. *Str.* 1004, 1071.

For a *townſhip* in ſtrictneſs ſeemeth to be nothing elſe but the conſtablewick or decennary which anciently conſiſted of ten men with their families, of which the chief or head was the conſtable, otherwiſe called the tythingman, or headborough; although now for the moſt part by reaſon of the increaſe of people, and the improvements of tillage, the decennary comprehendeth many more families than ten.

Four, three, or two] *M.* 13 *G.* 2. *K.* and *Harman.* An appointment of five overſeers was thought to exceed the direction of the ſtatute; but inaſmuch as the 13 & 14 *C.* 2. impowers the juſtices to appoint two or more (indefinitely) in townſhips or villages, and it hath been the cuſtom in large pariſhes to appoint more than four, the court would not quaſh the appointment. *Seſſ. C. V.* 2. 148.

Subſtantial houſholders there] *M.* 20 *G.* 2. Caſe of the overſeers of *Weobly* in *Herefordſhire.* There were two ſets of overſeers appointed, and both quaſhed; one, becauſe the perſons appointed were deſcribed only as *principal inhabitants*, inſtead of purſuing the words of the ſtatute, which are, *ſubſtantial houſholders:* and the other, becauſe it only called them ſubſtantial houſholders, without adding *there*, or *in the pariſh*; and this too was not in the body of the appointment (as it ought to be) but only in the direction at the foot of it. *Str.* 1261.

And abundance of other orders have by the court of king's bench been quaſhed from time to time, for not ſetting forth that the perſons appointed were ſubſtantial houſholders.

It is ſaid, that a *woman* ought not to be appointed overſeer. *E.* 10 *An. Mod. Ca.* 77.

And by the 30 *G.* 2. *c.* 25. No perſon ſerving for himſelf as a private man in the *militia*, ſhall during the time of ſuch ſervice be liable to ſerve as overſeer of the poor. *ſ.* 23.

To be nominated yearly in Eaſter *week*] *E.* 13 *G. K.* and *Clerkenwell.* The court ſeemed to think an appointment of overſeers on a *ſunday*, to be a good appointment; for it may be in *Eaſter* week, and this is the firſt day of the week. *Foley* 4.

Or within one month after Eaſter] *H.* 13 *G.* 2. *K.* and *Sparrow.* Upon a rule to ſhew cauſe, why the appointment of overſeers for the town of *Ipſwich* ſhould not be quaſhed, the objection was, that the juſtices upon a *mandamus* directed

rected to them, had appointed overſeers, but that it was not within the month after *Eaſter*, but afterwards, and that conſequently the appointment was void. But by *Lee* Ch. J. who delivered the opinion of the court; As the juſtices are puniſhable by the act for not doing their duty, it would be a very hard conſtruction to make the act it ſelf void, for it would ſubject the pariſh to very great inconveniences, for a thing which is not in their power to prevent. To interpret an act of parliament, we muſt conſider the miſchief to be remedied, the remedy provided, and the true reaſon of that remedy. In this caſe, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the juſtices ſhall appoint overſeers, and that within ſuch a time. Now the juſtices have neglected their duty, in not appointing overſeers within the proper time, and by the act have forfeited 5 *l.* but that doth not make ſuch appointment void. Were the expreſs direction of the act, that they ſhould appoint in that and no other time, it would be otherwiſe; but here the ſtatute is only directory, and a penalty inflicted on the juſtices for not following ſuch directions. *Seſſ. C. V.* 2. 140. *Str.* 1123.

Under the hand and ſeal of two or more juſtices] *M.* 13 *G. Chilmerton* and *Flagg*. The *ſeſſions* appointed overſeers: but the order was quaſhed by the court of king's bench, becauſe the ſeſſions have no original juriſdiction in that caſe by the ſtatute. *Seſſ. C. V.* 1. 260. *Foley* 7.

And the reaſon is, becauſe the ſtatute gives a power of appealing to the ſeſſions againſt the order of appointment; which power by this means would be taken away.

In or near the pariſh or diviſion] *M.* 13 *G.* 2. *K.* and *Sparrow*. An appointment of overſeers, not mentioning the juſtices to be of the diviſion, was held to be good enough; for that the words in this caſe are only directory. *Seſſ. C. V.* 2. 140.

And many other counties in England *and* Wales] *T.* 27 *C.* 2. In the caſe of *Skillington* and *Norton*, it was held, that although other counties in general are here mentioned in the recital; yet the ſtatute doth not extend to any other counties but thoſe expreſly named, none others being ſpecified in the enacting part. 2 *Lev.* 142.

But afterwards, in the caſe of *Dolting* and *Stokeland*, *H.* 11 *An.* It was held by the whole court, that by reaſon of the words [*and many other counties in* England *and* Wales] the act is general, and extends to other counties than thoſe named in the act, otherwiſe it would not extend to one county in *Wales*. *Foley* 98.

And in the caſe of *Cliſton* and *Churcham*, *H.* 12 *G.* 2. It was adjudged, that the act extendeth to all counties, being equally beneficial to all; and that the counties there ſpecified are mentioned only as inſtances. And *Lee* Ch. J. ſaid that ſo it was determined, upon great debate and conſideration, in the aforeſaid caſe of *Dolting* and *Stokeland*; which caſe hath been ever ſince adhered to. *Andr.* 314.

Warrant for returning liſts of overſeers.

2. And that the juſtices may know, what perſons are fit to be appointed overſeers, it is uſual and requiſite for them, to iſſue their precepts in ſome ſuch form as here followeth; *viz.*

Weſtmorland. { To *Thomas Denniſon*, gentleman, high conſtable of *Kendal Ward* within the ſaid county.

WE *two of his majeſty's juſtices of the peace for the ſaid county, one whereof is of the* quorum, *do hereby require you forthwith upon your receipt hereof, to iſſue your warrants to all the petty conſtables within your ſaid ward, in the form or to the effect, according as upon this our warrant is indorſed: Given under our hands and ſeals the —— day of ——*

The form of the ſaid high conſtable's warrant to the petty conſtables.

Weſtmorland, Kendal Ward. } To the conſtable of ——

BY *virtue of a precept from two of his majeſty's juſtices of the peace in and for the ſaid county (one whereof is of the* quorum) *to me directed, you are hereby required immediately upon ſight hereof, to give notice to all and every the overſeers of the poor within your conſtablewick, that they do make out a liſt in writing of a competent number of ſubſtantial houſholders within their reſpective diſtricts, and deliver in the ſame to the ſaid juſtices and others his ſaid majeſty's juſtices of the peace for the ſaid county, at —— in —— in the ſaid county, on —— the —— day of —— at the hour of —— in the forenoon of the ſame day; to the end that out of the ſaid liſt the ſaid juſtices may appoint other overſeers of the poor for the year then next enſuing. And be you then there, to certify what you ſhall have done in the premiſſes. Herein fail you not. Given under my hand the —— day of —— in the year of our lord ——*

Tho. Denniſon, *high conſtable.*

3. And

3. And the form of an appointment of overſeers, clear of the objections abovementioned, may be this: Form of an appointment of overſeers.

Weſtmorland. WE *two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *one whereof is of the* quorum, *do hereby nominate and appoint* A. O. *and* B. O. *being ſubſtantial houſholders of the pariſh* [or, *townſhip*] *of* ——— *in the ſaid county, to be overſeers of the poor of the ſaid pariſh* [or, *townſhip*] *according to the direction of the ſtatute in that caſe made and provided. Given under our hands and ſeals* (within a month after *Eaſter.*)

But by a remedial clauſe, in the act of the 17 *G.* 2. *c.* 38. It is enacted, that *the diſtreſs for the poor rate ſhall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overſeers.* ſ. 8.

4. *If any perſon ſhall find himſelf aggrieved, by any act done by the ſaid juſtices; he may appeal to the general quarter ſeſſions, whoſe order therein ſhall bind all parties.* 43 El. c. 2. ſ. 6. Appeal againſt the order of appointment.

To the general quarter ſeſſions] This clauſe leaves the appeal at large, and doth not reſtrain it to the *next* ſeſſions: But the abovementioned act of the 17 *G.* 2. directs the appeal to be to the *next* ſeſſions, but yet not in negative words, ſo as to ſay, that it ſhall be at the next ſeſſions, and not otherwiſe. So that both may ſeem to ſtand well together; and then the ſenſe of the ſtatute of the 17 *G.* 2. will be this, That the appeal againſt any thing done or omitted by the overſeers or juſtices, in caſes wherein no appeal is given by former ſtatutes, muſt be to the next ſeſſions only, becauſe the clauſe which gives the appeal, limits it to ſuch next ſeſſions; but in caſes wherein an appeal is given by former ſtatutes, ſuch appeal may be to the next ſeſſions according to this clauſe, or may be according to the directions of ſuch former ſtatutes. And in truth many acts of the churchwardens and overſeers may be ſo contrived, that they cannot be known before the next ſeſſions, and it would give them a great opportunity of fraud, if they might be ſafe by concealing ſuch practices, until the time of appealing to the next ſeſſions ſhould be expired. But then, in the caſe before us, there is no power to award coſts, unleſs the appeal be to the next ſeſſions by the 17 *G.* 2.

Overſeer refuſing to take the office.

5. *M.* 14 *G.* 2. *K.* and *Jones.* A perſon was indicted for not taking upon him the office of overſeer; and by the court it was held to be an offence indictable; for that altho' the ſtatute appoints a penalty, yet that penalty is not for refuſing to take the office, but for neglect of duty in that office: and where a ſtatute commands a thing, and appoints no penalty for diſobedience, ſuch offence is indictable as a contempt of the law. *Seſſ. C. V.* 2. 187. *Str.* 1146.

Overſeers general duty.

6. The overſeers thus appointed, and taking upon them the office, ſhall *within* 14 *days receive the books of aſſeſſments and of accounts, from their predeceſſors, and what money and materials ſhall be in their hands, and reimburſe them their arrears.* 17 G. 2. c. 38. ſ. 1, 11, 13.

And they ſhall take order from time to time, with the conſent of two ſuch juſtices as aforeſaid, for ſetting to work the children of all ſuch whoſe parents ſhall not by the ſaid churchwardens and overſeers, or the greater part of them, be thought able to keep and maintain them; and alſo for ſetting to work all ſuch perſons, married or unmarried, having no means to maintain them, and uſing no ordinary and daily trade. Which ſaid churchwardens and overſeers, or ſuch of them as ſhall not be let by ſickneſs or other juſt excuſe, to be allowed by two ſuch juſtices, ſhall meet at leaſt once a month, in the church, on ſunday *in the afternoon, after divine ſervice, there to conſider of ſome good courſe to be taken, and order to be ſet down in the premiſſes; Upon pain that every one of them abſenting themſelves without lawful cauſe, from ſuch monthly meeting, or being negligent in their office, ſhall forfeit for every default* 20 s. *to the poor; to be levied by ſome or one of the churchwardens and overſeers, by warrant from two ſuch juſtices, by diſtreſs; or in defect thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail or mainprize, till the ſaid forfeiture ſhall be paid. Provided, that if any perſon ſhall be aggrieved by any act done by the ſaid churchwardens and other perſons, he may appeal to the general quarter ſeſſions, whoſe order therein ſhall bind all parties.* 43 El. c. 2. ſ. 2, 6, 11.

In the church] But the penalty for not meeting in the church ſhall not be inflicted on the overſeers of extraparochial places; becauſe they have no church to meet in. 8 *Mod. E.* 7 *G.*

II. Of ſettlements.

By the common law, a ſettlement did imply no more, than a man's houſe and home and habitation; and at the common law a man might gain a ſettlement any where, and could not be removed, unleſs in the caſe of vagrancy. The ſtatute of the 39 *El.* is the firſt ſtatute that mentions the word *ſettlement*. The firſt day a man came into a pariſh, he was a ſtranger, the ſecond day he was a gueſt, and the third he was an inhabitant. And until the diſſolution of monaſteries, the poor were in a great meaſure maintained by the religious houſes. *Caſ. of S.* 44.

Afterwards, when the ſtatute of the 43 *El.* was made, by which every pariſh was to maintain its own poor; ſuch perſons were held to be the poor of any pariſh, as were ſettled there a convenient time, which was judged to be a month; ſo that a month's abode made an inhabitant. 2 *Salk.* 492.

But there remaining ſome doubts upon the ſaid ſtatute of the 43 *El.* the ſtatute of the 13 & 14 *C.* 2. was made, which ſtatute will often occur in the following ſections, being the foundation of all the ſettlements as they ſtand at this day; upon which ſingle act there have been more caſes adjudged, than upon any other fifty acts in the ſtatute book.

But that I may treat diſtinctly, and as clearly as may be, concerning this ſubject of ſettlements, (after having firſt premiſed one general rule which controlls almoſt all the caſes of ſettlements, *viz.* That *no ſettlement can be legal, which is brought about by practice or compulſion*; Read. Tit. *Poor.*) I ſhall proceed in the following method:

i. Of perſons having no ſettlement.
ii. Of certificates.
iii. Of ſettlement by birth, viz. *of baſtards, and others.*
iv. Of the ſettlement of children with their parents.
v. Of ſettlement by apprenticeſhip.
vi. Of ſettlement by ſervice.
vii. Of ſettlement by marriage.
viii. Of ſettlement by continuing forty days after notice.

ix. Of

ix. Of ſettlement by paying pariſh rates.
x. Of ſettlement by ſerving a pariſh office.
xi. Of ſettlement by renting ten pounds a year.
xii. Of ſettlement by a perſon's own eſtate.

i. Of perſons having no ſettlement.

Whereas the number of poor, within England, *and* Wales, *is very great and burthenſome; and whereas, by reaſon of ſome defects in the law, poor people are not reſtrained from going from one pariſh to another,——it is enacted, that within forty days after any ſuch perſons ſhall come to ſettle in any tenement under* 10 l. *a year, two juſtices* (1 Q.) *may remove them to the place where they were laſt legally ſettled.* 13 & 14 C. 2. c. 12. ſ. 1.

Poor within England *and* Wales] By theſe words of reſtriction, and the word [*ſuch*] afterwards, which ſeems to have reference to thoſe kinds of poor only, and by the direction of *removing them to the place where they were laſt legally ſettled*, which can only mean where they were laſt legally ſettled within the then kingdom; it may ſeem, that other poor, not belonging to *England* or *Wales*, are not within the regulations of this ſtatute.

And in *Conrad*'s caſe, *T.* 6 *W.* it was adjudged and declared as follows: A woman and her two children landed at *Harwich* from *Holland*, and removing to another place, were ſent back by order of two juſtices: But by the court, The landing makes no ſettlement; and the order was quaſhed. And *Eyre* J. ſeemed to be of opinion, that this is a caſe omitted out of the ſtatute. *Comb.* 287.

And if there is a defect in the law with reſpect to the ſubjects of a foreign realm, the caſe of a *Scotchman* or *Iriſhman* in *England* ſeemeth to be not much different, except only when they ſhall become vagrants, for in ſuch caſe they may be ſent into *Scotland* or *Ireland*: But otherwiſe, if they be able to maintain themſelves, and commit no act of vagrancy, it doth not appear that they can be removed by order of two juſtices, as perſons likely to become chargeable. By which means they ſeem to be in a better condition in *England*, than the *Engliſh* ſubjects: for that, not being removeable, until they be forced to aſk relief, and ſo thereby become vagrants, as wandring abroad and begging; they may continue undiſturbed, without the intanglements of a certificate, and conſequently are in a better capacity of gaining ſettlements, if not for themſelves,

yet

yet for their children born here, and for their ſervants and apprentices.

Within forty days] The ſtatute of the 1 *J.* 2. requires that ſuch 40 days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing; and by the 3 *W.* it muſt be from the time of the publication of ſuch notice in the church: But it hath always been underſtood, that a perſon not removeable need not to give ſuch notice; and that a perſon continuing 40 days *unremoveable*, and a perſon *not removed* for 40 days after ſuch notice given and publiſhed, ſhall equally gain a ſettlement. Now the following caſe happened, *E.* 2 *G.* between the pariſhes of St. *Giles* and St. *Margaret:* An *Engliſhwoman* was married to a foreigner, who had no ſettlement in *England*; the huſband continued for the ſpace of 40 days in a pariſh unremoveable, for that there was no place to which he could be removed; and it was urged, that the wife continuing with him, as part of his family, for 40 days unremoveable, ſhe did thereby gain a ſettlement: But by *Holt* Ch. J. Where a perſon ſtays 40 days in a place, whence he hath a right not to be removed, that gains a ſettlement; otherwiſe, where he only ſtays in a place, becauſe they do not know where to remove him. And in this caſe, he ſaid, that he did not know that a foreigner had a right to be maintained in any place to which he came, but that they might let him ſtarve. *Seſſ. C. V.* 1. 97.

But there is another thing to be conſidered. It appears, in that caſe, that there was a *terminus a quo*, but not a *terminus ad quem*; or in other words, that the man's ſituation in the pariſh was not ſuch as the law calls unremoveable, as if he had rented a tenement of 10 *l.* a year; but that in fact he was removeable, if they had known whither to have ſent him. But put the caſe, that he had rented a tenement of 10 *l.* a year; or, which is the ſame thing, that a *Scotchman* or *Iriſhman* had rented a tenement of 10 *l.* a year: The queſtion is, Whether by continuing thereupon 40 days unremoveable, he would thereby have gained a ſettlement in purſuance of this ſtatute? If it is anſwered in the affirmative, then this will follow; that if he comes to reſide upon a tenement under 10 *l.* a year, and gives notice in writing, and cauſes the ſame to be publiſhed as the law requires, and continues 40 days after ſuch publication *unremoved*, he muſt by the ſame ſtatute gain a ſettlement. And if ſo, a *Scotchman* or *Iriſhman* may ſettle himſelf and his family in 40 days time, in any pariſh whatſoever, where he can procure any little cottage to live in by giving and

cauſing

cauſing to be publiſhed ſuch notice as aforeſaid. For removed he cannot be; and continuing *unremoved* for 40 days after the publication of ſuch notice, he becomes afterwards *not removable*; and being not removable, and being ſettled, is the ſame thing. On the other hand, if we have recourſe to the obſervation abovementioned, and ſay, that this ſtatute extends only to the poor of *England* and *Wales*, then this will follow; that a *Scotchman* or *Iriſhman* can gain no ſettlement in *England* by virtue of this ſtatute, and if not by this, then not by any other of the ſubſequent ſtatutes concerning ſettlements, for that they are all relative thereunto, and depending thereupon; that is to ſay, in theſe circumſtances, a *Scotchman* or *Iriſhman* can gain no ſettlement in *England*, neither by renting 10 *l.* a year, nor by continuing 40 days after notice, nor by apprenticeſhip, nor by ſervice, nor by paying pariſh rates, nor by ſerving a pariſh office. Which *dilemma*, ſo far as I have obſerved, hath not yet been ſolved, nor conſidered.

ii. Of certificates.

Before we come to treat ſpecially of ſettlements, it will be neceſſary to ſpeak ſomewhat of certificates, as affecting ſettlements ſeveral ways.

By the 13 & 14 *C.* 2. *c.* 12. Power is given, upon complaint of the churchwardens or overſeers, within 40 days after a perſon is come to ſettle on any tenement under 10 *l.* a year, unto two juſtices (1 Q.) to remove ſuch perſon to the place where he was laſt legally ſettled, *unleſs he give ſufficient ſecurity for diſcharge of the pariſh, to be allowed by the ſaid juſtices.* ſ. 1.

And by the 8 & 9 *W.* *c.* 30. it is enacted as follows: Foraſmuch as many poor perſons chargeable to the place where they live, merely for want of work, would elſewhere maintain themſelves, but not being able to give ſuch *ſecurity* as may be expected, on their coming to ſettle in any other place, it is therefore enacted, That *if any perſon who ſhall come into any pariſh or place there to reſide, ſhall at the ſame time procure, bring, and deliver to the churchwardens or overſeers of the pariſh or place where he ſhall come to inhabit, or to any of them, a certificate, under the hands and ſeals of the churchwardens and overſeers of any other pariſh, townſhip, or place, or the major part of them, or of the overſeers where there are no churchwardens; to be atteſted by two or more credible witneſſes, thereby owning and acknowledging the perſon mentioned in the ſaid certificate, to be an inhabitant legally ſettled in that pariſh, townſhip, or place; Every ſuch*

certificate, having been allowed of and ſubſcribed by two juſtices of the place from whence the certificate ſhall come, ſhall oblige the ſaid pariſh or place, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given: And then, and not before, it ſhall be lawful for ſuch perſon, and his children, tho' born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place, from whence ſuch certificate was brought. ſ. 1.

And by the 3 G. 2. *c.* 29. *The witneſſes who atteſt the execution of the certificate by the churchwardens and overſeers, or one of the ſaid witneſſes, ſhall make oath before the juſtices who are to allow the ſame, that ſuch witneſs or witneſſes, did ſee the churchwardens and overſeers of the poor, whoſe names and ſeals are thereunto ſubſcribed and ſet, ſeverally ſign and ſeal the ſaid certificate; and that the names of ſuch witneſſes, atteſting the ſaid certificate, are of their own proper hand writing: Which ſaid juſtices ſhall alſo certify, that ſuch oath was made before them. And every ſuch certificate ſo allowed, and oath of the execution thereof ſo certified by the ſaid juſtices, ſhall be taken, deemed, and allowed, in all courts whatſoever, as duly and fully proved, and ſhall be taken and received as evidence, without other proof thereof.* ſ. 8.

Procure ——— a certificate] *H.* 3 *G.* 2. *K.* and *St. Ives.* A *mandamus* was moved for, to compel the churchwardens and overſeers to ſign a certificate: But the court rejected the motion as a very ſtrange attempt. *Seſſ. C. V.* 2. 128.

A certificate] The form of which certificate may be this:

Weſtmorland. WE *the churchwardens and overſeers of the poor of the pariſh* [or *townſhip*] *of* ———*in the ſaid county of* Weſtmorland, *do hereby certify, own, and acknowledge, that* A. L. *yeoman, is an inhabitant legally ſettled in our pariſh* [or, *townſhip*] *of* ——— *aforeſaid. In witneſs whereof we have hereunto ſet our hands and ſeals, the*——*day of*——*in the year of our lord*——

Atteſted by
A. W.
B. W.

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overſeers of the*
G. H. } *poor.*

We

We J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the county of*———*aforeſaid, do allow of the abovewritten certificate. And we do alſo certify, that* A. W. *one of the witneſſes who atteſted the ſame, hath this day made oath before us the ſaid juſtices, that he the ſaid* A. W. *did ſee the churchwardens and overſeers of the poor of the ſaid pariſh, whoſe names and ſeals are thereunto ſubſcribed and ſet, ſeverally ſign and ſeal the ſame; and that the names of* A. W. *and* B. W. *who are the witneſſes atteſting the ſaid certificate, are reſpectively of their own proper handwriting. Given under our hands this*——— *day of*———

Such certificate——— *ſhall oblige the ſaid pariſh or place, to receive and provide for the perſon mentioned therein*] Formerly it was held, that a certificate was only concluſive between the two pariſhes: but now it is held to be concluſive to all the world, as is determined in the following caſe; *viz.*

M. 9 *An. Henyton* and *St. Mary-Axe.* The queſtion was, Whether the pariſh granting the certificate was bound thereby as to the pariſh only to which the certificate was granted, or concluded as to all pariſhes whatſoever? *Parker* Ch. J. delivered the opinion of the whole court: Before the ſtatute, a certificate was only an evidence of a private undertaking between the pariſhes, in the nature of a contract; but now it is a ſolemn acknowledgment, like the conuzance of a fine; and thereby the party is owned to be legally ſettled there: and as all other pariſhes on this certificate are bound to receive him, ſo the pariſh that certifies is concluded as to all other pariſhes. 2 *Salk.* 535. *Foley* 177.

And the caſe is put even yet ſtronger in the following report: *T.* 20 *G.* 2. *K.* and *Hedcron.* The pariſh of *Maidſtone* gave a certificate to *Hedcron*, acknowledging *Ric. Burden*, and *Mary* his wife, and their four children, to be legally ſettled at *Maidſtone.* Afterwards it appeared, that *Mary* was not his lawful wife, but that he had a former wife then living. Upon which *Maidſtone* acknowledged the ſettlement of the real and true wife, but not of the ſaid *Mary* and her children; and pleaded that it would be hard that they ſhould be forced to take two wives, and different children. But by the court, the pariſh that certifies muſt take care for whom they certify; and the certificate is concluſive. *Seſſ. C. V.* 2. 206. *Str.* 1233.

Whenever they ſhall happen to become chargeable] Yet a certificate to receive the perſons whenever they become chargeable,

able, is not binding againſt a ſubſequent ſettlement; for tho' it be according to the agreement between the pariſhes, yet a private agreement in this reſpect ſhall not alter the law. *Harriſon* and *Lewis*, 3 *Salk.* 253.

What hath hitherto been inſerted under this head, is judged ſufficient for this place, to ſet forth the law concerning certificates in general; what further belongs to the ſettlement and removal of certificate perſons, will fall-in in its due courſe afterwards.

iii. Of ſettlement by birth; viz. *of baſtards, and others.*

1. Of *baſtards.*

Note; It is not in this place queſtioned, who ſhall or ſhall not be deemed a baſtard, but the ſettlement only is conſidered of ſuch as are firſt ſuppoſed to be baſtards: other matters relating to them, as concerning their filiation, and maintenance, and the like, are treated of under title **Baſtards.**

How far baſtards are to be ſettled where born.

A baſtard child is prima facie *ſettled where born.* This is an uncontroverted rule, and is ancienter than the ſtatute of 13 & 14 *C.* 2. concerning ſettlements; and ancienter than the 43 *El.* which requires the poor to be maintained within their reſpective pariſhes; for in the ſtatute of the 18th of *Eliz.* which takes order for the mother and reputed father to contribute towards their maintenance, it is thus recited in the preamble, *Concerning baſtards begotten and born out of lawful matrimony, the ſaid baſtards being now left to be kept at the charges of the pariſh where they were born*——

Neverthelefs this rule admits of divers exceptions; which are as follows:

Baſtard born in a place by colluſion.

(1) If a woman comes into a place by privity and colluſion of the officers where ſhe belongs, and is there delivered of a baſtard; ſuch baſtard gains no ſettlement, notwithſtanding its birth. *Caſ. of S.* 66.

And in the caſe of *Maſters* and *Child*, *H.* 10 *W.* It was ruled, that if a woman big with child of a baſtard, and ſettled in one pariſh, is perſuaded to go into another, and there be delivered; this fraud will make the pariſh chargeable where the mother was ſettled, tho' the child was not born there: But if a woman, with child of a baſtard, come accidentally into one pariſh, and is perſuaded by ſome of the pariſhioners to go into another pariſh, which ſhe

doth, and there is delivered, this ſhall not charge that pariſh which perſuaded her. 3 *Salk.* 66.

Baſtard born after the order of removal is made out.

(2) Alſo, If a baſtard is born under an order of removal, and before the mother can be ſent to her place of ſettlement being hindred by water or otherwiſe; ſuch baſtard ſhall not be ſettled where ſo born, but at the mother's ſettlement. *M.* 10 *An.* Q. and *Ickleford. Seſſ. C. V.* 1. 33. *Caſ. of S.* 66.

Baſtard born in removing.

(3) So alſo, If the officers are carrying a woman by virtue of an order of removal, and ſhe be delivered on the road *in tranſitu*; the baſtard ſhall go with the mother where ſhe is going, by virtue of the order, notwithſtanding the birth. *E.* 10 *An. Jane Grey*'s caſe. *Caſ. of S.* 66.

Baſtard born after the removal and before the appeal.

(4) Again, In the caſe of *Much-Waltham* and *Peram*, *M.* 8 *W.* A woman big with a baſtard child, was removed by order of two juſtices, from *Much-Waltham* to *Peram*. Before the next ſeſſions, ſhe was delivered at *Peram* of a baſtard child. At the ſeſſions, *Peram* appealed, and the juſtices adjudged the woman to be laſt ſettled at *Much-Waltham*, and ordered her to be ſent back thither. After which, an order was made, to ſettle the child at *Peram*; which it was moved to quaſh, becauſe tho' regularly baſtards muſt be maintained where born, yet in this caſe, where there ſeems to be a contrivance, it ſhall not be ſo. The court ſeemed to agree to this, and a rule was made to ſhew cauſe, but none was ſhewed. 2 *Salk.* 474.

And further, In the caſe of *Weſtbury* and *Coſton*, *H.* 2 *An.* A woman big with child was removed by order of the juſtices, from *Weſtbury* to *Coſton*: And, pending the order, before the next quarter ſeſſions, ſhe was delivered of a baſtard child. *Coſton* appealed, and thereupon the order of the two juſtices was reverſed; but the child was ſent back to *Coſton*, as the place of its birth. But by the court, the birth at *Coſton*, did not ſettle the child there, becauſe it was under an illegal order procured at *Weſtbury*, which order being reverſed, the matter is no more than this, that they unjuſtly procured the woman to go thither. And *Holt* Ch. J. ſaid, Tho' here be no fraud in this caſe, yet here is a wrongful removal, and the reverſal makes all void *ab initio*: Fraud, or not fraud, is not material in this caſe; but the ſettlement of the child depends upon the removal, for if that was wrong, they ſhall not eaſe themſelves by it. 1 *Salk.* 121. 2 *Salk.* 532.

Baſtard born in a ſtate of vagrancy.

(5) So alſo, By the ſtatute of the 17 *G.* 2. *c.* 5. Where any woman, wandring and begging, ſhall be delivered of a child, in any pariſh or place, to which ſhe doth not belong, and thereby becometh chargeable to the ſame; the church-

churchwardens or overſeers may detain her, till they can ſafely convey her to a juſtice of the peace. And if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent thither by a vagrant paſs; but the ſettlement of ſuch woman, ſhall be deemed the ſettlement of ſuch child. *ſ.* 25.

(6) A child born in the houſe of correction, ſhall be ſent to the place of it's mother's ſettlement. 2 *Bulſtr.* 358. Baſtard born in priſon.

And in the caſe of *Elſing* and the county gaol of *Herefordſhire*, *H.* 2 *G.* A baſtard was born in the county gaol: Reſolved, that the ſettlement was with the mother. *Seſſ. C. V.* 1. 94.

(7) *T.* 5 *G.* *New Windſor* and *White Waltham.* The pariſh of *White Waltham* gave a certificate to a man and a woman ſuppoſed to be his wife, with which they went into the pariſh of *New Windſor*, and had there ſix children. Afterwards, the woman ſwearing they were never married, the queſtion was, whether (upon that ſuppoſition) the children, as baſtards, ſhould be ſettled in the pariſh where they were born, or in the pariſh which gave the certificate with their father and mother. And by the court, there is no doubt but the baſtard of a certificate perſon is ſettled in the place of his birth, for he is not ſuch an iſſue as will follow the ſettlement of his father or mother, neither is ſuch baſtard *his* or *her* child within the intention of the ſtatute, ſo as to be ſent back with the parent. *Str.* 186. Baſtard born under a certificate.

But in this caſe the point turned chiefly upon the certificate's being concluſive (for as the pariſh had given a certificate with the man and woman, as huſband and wife, the court held that they were not afterwards to be admitted to diſpute the validity of ſuch marriage, but adjudged the children to be ſettled in the pariſh granting the certificate); Therefore in the caſe of *Hynton* and *Lyd-linch*, *T.* 15 *G.* 2. the matter came under debate again; which was thus: A ſingle woman went into the pariſh of *Lyd-linch*, with a certificate from *Hinton*; lived there a year, and then had a baſtard child. The ſole queſtion was, Whether the child ſhould be ſettled in the pariſh where born, or in the pariſh giving the certificate. By the court; The certificate muſt be taken to be good, and all fraud to be laid out of this caſe, it being a year that ſhe dwelt in the pariſh, before ſhe was delivered of the child; and wherever this

court, in determining a ſettlement, adjudges upon the point of fraud, that fraud muſt be expreſly ſtated; for as fraud is odious, it is never to be preſumed. The caſes hitherto adjudged as to this point, have either depended on point of fraud, or an illegal removal. So where the child is born in a gaol, he ſhall be ſettled in the pariſh where his mother is; for ſhe ſhall be conſtrued to be in cuſtody of the law, and in all other reſpects a pariſhioner. But the preſent caſe ſtands intirely on the 8 & 9 *W.* which for the encouragement of labour and induſtry, gave power of removing perſons by certificate, which certificate obliges the pariſh to whom given, to receive and continue them in that pariſh, till they become actually chargeable, and then ſuch perſon is to be removed, together with his or her *family*, and in another place, with his or her *children*, to the place from whence the certificate was brought. The queſtion then is, whether the baſtard is included under the words *family* or *children*; and we take it he is not: for the law takes no notice of baſtard children, they are *filii nullius*, *filii populi*, and are *prima facie* ſettled where born. *Neſſ. Baſt. Seſſ. C. V.* 2. 170. *Str.* 1168.

Baſtard not to be removed whilſt a nurſe child.

Hitherto concerning the ſettlement of a baſtard child: But notwithſtanding the child's ſettlement, yet nevertheleſs if the mother and the child have different ſettlements, it ſeemeth that the baſtard child, even as all other children, ſhall go with the mother for nurture until the age of ſeven years, and be maintained at the charge of the pariſh where the mother is ſettled, as a neceſſary appendage of the mother, and inſeparable from her; for there doth not ſeem to be any law to force the child from the mother, or to compel the pariſh where it was born to maintain it whilſt it is out of their pariſh.

As to its being inſeparable from the mother, the following caſe happened, *M.* 3 *G.* 2. *Skeffreth* and *Walford*. The order was, to remove a woman to her ſettlement; and her baſtard child, of two years of age, to another pariſh at a diſtance from the mother, being the place of its birth. It was objected, that the child being a nurſe child, they cannot ſeparate it from the mother, by reaſon of the care neceſſary to nurture ſo very young a child; which none can be ſuppoſed ſo fit to adminiſter as the mother of it; and therefore it ſhould have been ſent with her to the place of her ſettlement. And it was quaſhed by the court for that reaſon. *Seſſ. C. V.* 2. 90.

But altho' the child may not be ſeparated from the mother, yet if ſhe voluntarily deſert it, it ſeemeth that the

cauſe of nurture then ceaſeth, and that then it may be ſent to its place of ſettlement.

2. Of *legitimate children.*

How far legitimate children ſhall be ſettled where born.

In the caſe of *Rickmanſworth* and St. *Giles*'s; A child was ordered to be removed from the pariſh of *Rickmanſworth* to the pariſh of St. *Giles*, as being the place of his birth, the place of his father's laſt legal ſettlement being not known: For where the father's place of laſt legal ſettlement of a legitimate child is not known, there the child may be ſent to the place of its birth, as well as an illegitimate one. *Black.* 246.

H. 8 *An. Cripplegate* and *St. Saviour*'s. A child of three years of age was removed from one of theſe pariſhes to the other, and it appeared in the order, that they removed him there, becauſe he was born there, not having any other ſettlement. By the court; The father's ſettlement is the ſettlement of the children, when it can be found out; otherwiſe the birth of the child *prima facie* is the ſettlement of the child, until there is another ſettlement found out. So a baſtard child's ſettlement is its birth, becauſe it is *filius nullius*; ſo if they cannot find out the ſettlement of a legal father, the birth is a ſettlement of the child. If a child be dropt in a pariſh, they may remove him to the place of his birth, or where his father's ſettlement was; and the ſettlement by birth is only *quouſque* they find the father's ſettlement; and if they never can find that, it is abſolute upon them. *Foley* 265.

But here it is to be obſerved, that in the two caſes abovementioned, the point was not in queſtion, whether or no if the father had no ſettlement, yet if the *mother* had a ſettlement, ſuch children ſhould follow the mother's ſettlement, or ſhould be ſent to the place of their birth; and there will appear good opinions in the next courſe of ſettlements, that if the father hath no ſettlement as being a foreigner, or if the father's ſettlement is not known, yet if the mother hath a ſettlement, the children in ſuch caſe ſhall not be ſent to the place of their birth, but to the place of their mother's ſettlement: But the rule intended to be drawn from theſe caſes, which is ſufficient for this place, and which the caſes will well bear, is no more than this, that the place of the birth of a legitimate child is the ſettlement of it, until another ſettlement be found out.

iv. Of the ſettlement of children with their parents.

Settlement of a legitimate child with the parents.

1. The birth of legitimate children doth not give them a ſettlement, except where the ſettlement of their father and mother is not known, and then only till it is known. *Foley* 269.

At what age a child may gain a ſettlement diſtinct from the parents.

2. Formerly it was held, that a child ſhall continue with its parents as a nurſe child, until it ſhall be 8 years of age, during which time it ſhall not be deemed capable of gaining a ſettlement in its own right; but by the later reſolutions it ſeems to be agreed, that a legitimate child ſhall neceſſarily follow the ſettlement of its parents as a nurſe child, or as part of the family, only until it ſhall be 7 years of age; and that after that age it ſhall not be removed as part of the father's family, but with an adjudication of the place of its own laſt legal ſettlement, as being deemed capable at that age of having gained a ſettlement of its own. But it ſeemeth not difficult to determine with exact certainty, at what age a child may have acquired a ſettlement of its own, diſtinct from the parents ſettlement. For by the 5 *El. c.* 5. *ſ.* 12. A child of ſeven years of age may be bound apprentice to a ſhipwright, fiſherman, owner of a ſhip, or other perſon uſing the trade of the ſeas; and by the vagrant act of the 17 *G.* 2. a vagrant's child of that age may by the juſtices be put out an apprentice: And ſo ſoon as he ſhall have reſided and lodged in a pariſh for 40 days under the indenture, he will have thereby gained a ſettlement. So that the preciſe time, when a perſon may have gained a ſettlement in his own right, is at the age of ſeven years and 40 days.

Father living.

3. *E.* 10 *An.* Q. and *St. Giles*'s. Order to remove an infant to the pariſh of *St. Giles*; becauſe it appeared, that tho' the father was ſettled at another place, yet the child was born at *St. Giles*'s. Quaſhed, by the court; for that the place of the ſettlement of the child is with the father, and not the place where the child was born. *Seſſ. C. V.* 1. 18.

H. 10 *G. St. Giles's Reading* and *Everſly Blackwater*. It was ruled by all the court upon argument, that where a father gains a ſecond ſettlement after the birth of his child, that ſettlement is immediately communicated to the child. And a child may be ſent to the place of his father's ſettlement, without ever having been there before. *Seſſ. C. V.* 2. 112. *Str.* 580.

M. 12 *G.* 2. *Souton* and *Sidbury*. The queſtion was, whether the children, being above the age of nurture, ſhall be

be removed with the father to the father's ſettlement, where the children had never inhabited? By *Lee* Ch. J. In the caſe of *Everſly Blackwater*, the court were of opinion, that a child might be ſent to the ſettlement of his father, tho' it had never been there before, contrary to an opinion of L. *Parker* in a former caſe. And he ſaid, the true diſtinction, I think, is, that where children have gained no ſettlement, but continue part of their father's family, they ſhall follow their father's ſettlement. *Seſſ. C. V.* 2. 150. *Andr.* 345.

T. 2 *An. Comner* and *Milton.* A man ſettled at *Comner*, and having ſeveral children born in that pariſh, afterwards removed to *Milton* with his children, and gained a ſettlement there; and becoming very poor, his children born in *Comner*, were by an order of two juſtices ſent to *Comner*, *viz.* thoſe that were under ſeven years old; the juſtices apprehending, that the place of their birth was the place of their lawful ſettlement. And this order being removed into the king's bench by certiorari, it was inſiſted to maintain the order, that the children had gained a ſettlement in *Comner* by birth, which was not altered or defeated by any ſubſequent act of their father in gaining a ſettlement at *Milton*; for his children were with him there only as nurſe children, and his ſettlement ſhall not be the ſettlement of the children. But by *Holt* Ch. J. The place where a baſtard is born, is the place of his ſettlement, unleſs there is ſome trick to charge the pariſh; but the place where legitimate children are born, is not the place of their ſettlement, for let that be where it will, the children are ſettled where their parents are ſettled; as for inſtance, if the father is ſettled in the pariſh of *H.* but goes to work in the pariſh of *B.* and before he gains any ſettlement there, has a ſon born in the pariſh of *B.* and then dies; this child may be ſent to the pariſh of *H.* for it is not the birth, but the ſettlement of the father, that makes the ſettlement of his child; and if the father hath gained a new ſettlement for himſelf, he hath likewiſe gained a new ſettlement for his children, who do not go with him to his new ſettlement as nurſe children, but as part of his family. 3 *Salk.* 259.

The foregoing caſes proceed upon a ſuppoſition that the children are part of the father's family; the two following caſes are, where the child was no part of the father's family, but had left the father, and afterwards the father acquired a new ſettlement; and the queſtion was, whether in ſuch caſe the ſon (having gained no ſettlement of his own in the mean time) ſhall follow the father's new acquired ſettlement.

T. 7 G. Eaſtwoodhay and *Weſtwoodhay.* Upon appeal from an order of two juſtices, for the removal of *Robert Baker*, from the pariſh of *Weſtwoodhay* to the pariſh of *Eaſtwoodhay*, the ſeſſions ſtate the fact ſpecially for the opinion of the court: That forty years ſince, *Thomas Baker*, the father of this *Robert*, was ſeiſed in fee of a freehold eſtate in the pariſh of *Hamſtead Marſhal*, where he lived till the year 1697, and had this ſon *Robert*, who was at that time eight years old: That in 1697, *Thomas* the father and all his family removed to *Chevely*, where he rented a tenement of 20*l.* a year, for two years: That in 1699, he purchaſed a copyhold eſtate of 11*l.* a year in the pariſh of *Weſtwoodhay*, whither he removed with his ſon and ſervants, and ſerved churchwarden and other pariſh offices, and paid taxes, and ſtaid there till the year 1716: That in 1716, he purchaſed a cottage of 1*l.* 12*s.* 6*d.* a year in *Eaſtwoodhay*, and went and lived upon it till his death; but *Robert* the ſon ſtaid behind in *Weſtwoodhay*, where he married a wife, and has worked ever ſince on his own account, and that he is 30 years old. Upon the whole the ſeſſions confirm the order of the two juſtices for his ſettlement at *Eaſtwoodhay*. It was moved to quaſh the order of ſeſſions, for that the ſettlement of *Robert* the ſon is either at *Hampſtead Marſhal*, where he was born, and where he lived till eight years old; or if it ſhould be carried ſo far, as that he gained a new ſettlement with the father, by removing with him as part of his family, according to the caſe of *Cumner* and *Milton*, yet that can carry him no farther than *Weſtwoodhay*, which is the laſt place to which he accompanied his father: but let the ſettlement be in either, it is not material now; the only queſtion being whether here is any ſettlement in *Eaſtwoodhay*, for which there is no colour. On the other hand, it was inſiſted, that let the ſon be of what age he will, he ſhall follow the ſettlement of the father, till he gains one by his own acquiſition; and it appearing he had never done any thing to gain a ſettlement by act of his own, either in *Hampſtead Marſhal*, *Chevely*, or *Weſtwoodhay*, then he muſt follow the ſettlement of the father as well in *Eaſtwoodhay* as in any of the reſt. *Pratt* Ch. J. The queſtion is not, where this man and his family are ſettled, but whether there appears a ſettlement of him in *Eaſtwoodhay*. If he had gone thither with his father, as part of the family; poſſibly it might have been a ſettlement of him there: but by ſtaying behind, he was divided from his father, and therefore there is no colour to make it a ſettlement in *Eaſtwoodhay*. I think his ſettlement is in *Weſtwoodhay*, which was the laſt place where he lived as part

of

of the father's family. To which the reſt of the court agreed: And the order was quaſhed. *Str.* 438.

E. 2 *G.* 2. *St. Michael's Norwich*, and *St. Matthew's Ipſwich*. Two juſtices made an order, to remove *Edmund Williams*, *Anne* his wife, and *Edmund*, *Solomon*, and *Amy*, children of the ſaid *Edmund* the father, from the pariſh of *St. Michael* in *Norwich*, to the pariſh of *St. Matthew* in *Ipſwich*. Upon an appeal from this order, the ſeſſions ſtated the matter ſpecially, *viz.* That *Edmund Williams* the elder, father of *Edmund Williams* the father of the ſaid children, was ſettled at *Shipton Mallet* in *Somerſetſhire*; and afterwards removed to *Bruton* in the ſaid county, and had a writing given him from *Shipton Mallet*, acknowledging his legal ſettlement to be there; by virtue of which he continued at *Bruton* for 20 years, where *Edmund* the ſon was born; and that he continued there with his father till he was 19 years of age, and was bred up to his father's buſineſs of a woolcomber. Then *Edmund* the ſon left his father, and came to *Norwich*, and there he married two wives; by the firſt he had *Edmund* the grandſon; and ten years after, his wife died. Then he married *Anne* his now wife; by whom he had *Solomon* and *Amy* two other children; ſince whoſe birth, about two years ago, *Edmund Williams* the grandfather gained a new ſettlement at *St. Matthew's Ipſwich*: But *Edmund* the ſon hath never lived with his father at *Ipſwich*, or any where elſe, ſince he lived with him at *Bruton*. The queſtion was, whether the perſons removed, to wit, *Edmund* the ſecond, his wife, and three children, ſhould follow the ſettlement of the grandfather at *Ipſwich*, or whether they ſhould not be looked upon as ſeparated from the grandfather's family, eſpecially after ſo long an interval of time? Mr. J. *Reynolds*; I do not ſee how the father can gain a ſettlement for the ſon, ſo many years after the ſon has left him. Lord Ch. J. *Raymond*; I think it is odd, that an old man of ſixty, who has left his father for 40 years, ſhall follow the ſettlement of his father, as oft as his father removes. In the caſe of young children it is otherwiſe; for they cannot be ſevered from their parents, becauſe of nurture. And by the whole court; The reaſon why we inquire into the ages of children is, becauſe if they are grown up, and above ſeven years old, they may gain a ſettlement by their own act; but it is almoſt a contradiction in terms to ſay, that a man who has left his father 40 years, ſhall follow the ſettlement of his father. *Seſſ. C. V.* 2. 129. *Str.* 831.

4. *H.* 10 *G. St. Giles's* and *Everſley Blackwater*. Tho' the place of the birth of a child, where the father hath no Father dead.

ſettle-

ſettlement, is the place of the ſettlement of the child; yet where the father hath gained a ſettlement, his children, tho' born in another pariſh, ſhall be looked on as ſettled at the place of their father's laſt legal ſettlement, and ſhall be removed thither, as well after the death of their father, if occaſion requires, as in his life time, ſuppoſing they have gained no ſettlement of their own. L. *Raym.* 1332. *Str.* 580.

T. 8 *W. K.* and *Luckington. Howel* and his wife were ſettled at *Luckington*, and came to *St. Auſtin*'s, and there a child was born. The father dies in the king's ſervice. The queſtion was, who ſhall keep the child? It was objected, that it was ſettled where born; for that they could not ſend it to the father, when he was dead. But by *Holt* Ch. J. The death of the father doth not alter the child's ſettlement. *Comb.* 380.

Father dead and the mother a widow.

5. *M.* 1 *G. St. George*'s and *St. Katherine*'s. A man ſettled in *St. Katherine*'s, married, and had ſix children born there, and died. After his death, the widow goes into the pariſh of *St. George*, with her ſix children, and rents a houſe of 12*l.* a year, and lives in it with her children four months. The ſingle queſtion was, whether the children ſhould be ſettled, where their father was laſt ſettled, or have a ſettlement with the mother in the pariſh of *St. George*; and the whole court were of opinion, that the ſix children were ſettled in the pariſh of *St. George*, where the mother's laſt ſettlement was. And by *Parker* Ch. J. There is no diſtinction between the ſettlement of children with the father or mother; for they are as much hers as the father's, and nature obliges her, as much as the father, to provide for them; ſo does the law; and every argument that holds for their ſettlement with the father, holds as to their ſettlement with the mother. The reaſon why children ſhall not gain a ſettlement, where the widow gains a ſettlement only by intermarriage, is, becauſe it is then not her family, but her huſband's; and ſhe cannot give the children any ſuſtenance without the huſband's leave. But in this caſe, ſince ſhe is equally puniſhable with her huſband for deſerting her children, and therefore could not leave them behind her, they muſt gain a ſettlement with her. *Foley* 254. *Seſſ. C. V.* 1. 69.

H. 13 *G. Woodend* and *Pauleſpury. John Buncher* was ſettled at *Woodend*, and died, leaving a widow and one daughter aged 14 years. The widow removed to *Pauleſpury*, into a meſſuage and tenement of her own for life, and took her daughter with her, and the daughter lived with her there two years. And the queſtion was, whether the daughter gained a ſettlement at *Pauleſpury?* And it was adjudged

adjudged that ſhe did; becauſe the mother being a widow, having gained a new ſettlement after her huſband's death, the daughter gained a ſettlement alſo as part of her family. And there is no difference, between a father's gaining a ſettlement, and a mother's in ſuch a caſe as this; for the mother is obliged to provide for her children after her huſband's death, as the father was when living; and ſhe could not leave this daughter behind her, neither could ſhe be removed from her. L. *Raym.* 1473. *Fol.* 256. *Str.* 746.

The ſame reſolved in the caſe of *Barton Tuff* and *Happiſburgh*. *T.* 8 & 9 *G.* 2. *Seſſ. C. V.* 1. 317.

6. *H.* 13 *G. Woodend* and *Pauleſpury*. If after the huſband's death, the wife ſhall marry again, to a man ſettled in another pariſh; her children by her former huſband muſt go with her for nurture, yet they are no part of her ſecond huſband's family; and therefore gain no ſettlement thereby, in the pariſh where the father in law is ſettled. L. *Raym.* 1473. Father dead and the mother married again.

T. 2 *An. Comner* and *Milton*. 2 *Salk.* 482. *M.* 10 *W.* 3 *Salk.* 259. If after the death of the father, the mother marries again, to a huſband who is ſettled in another pariſh; her children, ſuch of them as are above 7 years old, ſhall not be removed; thoſe under, ſhall be removed, but that only for nurture, for they ſhall be kept at the charge of the other pariſh, where their father whilſt living was ſettled; and to that pariſh they may be ſent after 7 years old, as to the place of their lawful ſettlement; for this accidental ſettlement of their mother, which was only by the marriage with a ſecond huſband, and as ſhe is now become one perſon with him, ſhall not gain a ſettlement for her children.

Note; this authority is only produced here, to ſhew the *ſettlement*, as to which it may be good enough; but as to the *maintenance* (as hath been intimated before, and as will be conſidered more at large when we come to treat of the maintenance of the poor) it doth not ſeem ſufficiently to appear, how one pariſh may be compelled to maintain their poor reſiding in another pariſh, unleſs it be in the caſe of perſons reſiding under a certificate.

7. *E.* 8 *G.* 2. *K.* and *St. Mary Berkhampſtead*. The father ran away, and the mother went and reſided on an eſtate deviſed to her: The queſtion was, whether the children could gain a ſettlement, by reſiding with the mother on ſuch eſtate, where the father had never lived? By *Hardwick* Ch. J. As it doth not appear, that the father is dead, we muſt ſuppoſe him to be living; and in ſuch caſe, Father run away, whether the child can gain a ſettlement with the mother.

the children could gain no ſettlement but what is derived from the father. *Seſſ. C. V.* 2. 182.

Father having no ſettlement, whether the child ſhall be ſettled with the mother.

8. *H.* 12 *G. K.* and *Weſterham.* An *Engliſhman*, whoſe ſettlement was not known, married, had a child, and ran away: The child was then nine years of age. By the court, the mother and child ought to be ſettled, where the mother was ſettled before marriage. *Foley* 252.

M. 3 *G.* 2. *St. Giles*'s and *St. Margaret's. Sarah Etherington*, with *Dorothy* her daughter aged five years, was removed from *St. Margaret*'s to *St. Giles*'s, as being the place of *Sarah*'s laſt legal ſettlement before her marriage, ſhe having married an *Iriſhman* who had no ſettlement: And it was adjudged, that *Dorothy* her daughter ſhall be ſettled with her mother in the pariſh of *St. Giles*, where her ſaid mother's ſettlement was before marriage. *Fol.* 251.

T. 9 *G. K.* and *St. Paul's Shadwell.* Reſolved by *Eyre* and *Forteſcue*, that where the father being a foreigner had no ſettlement, the children ſhould have the benefit of their mother's ſettlement; for that her right ſhould deſcend to them, and they ſhould not be ſent to the place of their birth. *Seſſ. C. V.* 2. 113.

H. 10 *G. St. Giles*'s and *Everſley Blackwater.* It was held by the court, that where the father's ſettlement cannot be found, yet if the mother's can, the child ſhall have the benefit of that. *Seſſ. C. V.* 2. 112.

H. 28 *G.* 2. *St. John's Wapping* and *St. Botolph's Biſhopgate.* A child of an *Iriſhman* having no ſettlement in *England*, and ſuppoſed to be on board a man of war in the *Weſt Indies*, and of his wife being an *Engliſhwoman*, was adjudged to go with the mother, to the mother's ſettlement which ſhe had before marriage.

Father and mother both dead, and the child's ſettlement not known.

9. A travelling woman, having a ſmall ſucking child upon her, was apprehended for felony, and ſent to the gaol, and was hanged: This child is to be ſent to the place of its birth, if it can be known; otherwiſe it muſt be ſent to the town where the mother was apprehended, becauſe that town ought not to have ſent the child to gaol, being no malefactor. *Read. Poor. Dalt.* 168.

And where a child is firſt known to be, that pariſh muſt provide for it, till they find another. *Comb.* 364, 372.

v. Of ſettlement by apprenticeſhip.

The ſtatutes relating to the ſettlement of apprentices, are theſe following; which I will firſt exhibit together at one view, and then ſet forth the judgment of the court of king's bench upon the ſeveral clauſes of the ſaid ſtatutes in their order.

Statutes concerning the ſettlement of apprentices.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the church-wardens or overſeers, within* 40 *days after any perſon ſhall come to ſettle in any pariſh, on any tenement under* 10*l. a year; two juſtices* (1 Q.) *may remove him to the place where he was laſt legally ſettled, either as a native, houſholder, ſojourner, apprentice, or ſervant, for the ſpace of* 40 *days at the leaſt.* By the 1 *J.* 2. *c.* 17. *The ſaid* 40 *days ſhall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing.* And by the 3 *W. c.* 11. *Not from the time of delivering ſuch notice, but from the time of the publication of ſuch notice in the church.*

But by the ſaid act of the 3 *W. If any perſon ſhall be bound an apprentice by indenture, and inhabit in any town or pariſh, ſuch binding and inhabitation ſhall be adjudged a good ſettlement, tho' no ſuch notice in writing be delivered and publiſhed.* ſ. 8.

By the 12 *An. ſt.* 1. *c.* 18. *If any perſon, after* June 24. 1713, *ſhall be an apprentice bound by indenture, to any perſon reſiding under a certificate, in any pariſh, townſhip, or place, and not afterwards having gained a legal ſettlement in ſuch pariſh, townſhip, or place; ſuch apprentice, by virtue of ſuch apprenticeſhip, indenture, or binding, ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place; but every ſuch apprentice ſhall have his ſettlement in ſuch pariſh, townſhip, or place, as if he had not been bound apprentice.* ſ. 2.

And by the 9 & 10 *W. c.* 11. *No perſon who ſhall come into any pariſh by a certificate, ſhall be adjudged by any act whatſoever to gain a ſettlement in ſuch pariſh, unleſs he ſhall* bona fide, *take a tenement of* 10*l. a year, or execute an annual office in ſuch pariſh.* (And conſequently, not by apprenticeſhip.)

And by the 8 *An. c.* 9. and 9 *An. c.* 21. *The maſter ſhall pay duty of* 6d. *a pound, for* 50*l. or under, and of* 12d. *a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or leſſer ſums; Except money given with pariſh apprentices, or out of publick charities. The ſum given, to be written in the indenture in words at length. And beſides the ſtamps before requiſite, the indentures to be moreover*

ſtamped

ſtamped with another ſtamp, denoting the 6d. *or* 12d. *a pound reſpectively. And if the ſums are not truly inſerted, or duties not paid or tendred, or indentures not ſtamped or tendred to be ſtamped within the times limited; ſuch indentures ſhall be void, and not available in any court or place, or to any purpoſe whatſoever.*

On complaint within 40 *days*] This ſtatute of *C.* 2. gives power to remove perſons within the ſpace of 40 days after they come to reſide, but no power to remove them after the ſaid 40 days; and being unremovable, and legally ſettled is the ſame thing. The ſtatutes of *J.* 2. and *W.* 3. do reſtrain ſuch 40 days reſidence to be after notice in writing; but the latter clauſe of the ſtatute of *W.* takes off that reſtriction with regard to apprentices; and the reaſon thereof is, becauſe ſuch notice would be to no purpoſe, for that the juſtices cannot upon the complaint of the overſeers remove the apprentice from his maſter, that is to ſay, they cannot upon complaint of the overſeers make void the indenture between the maſter and his apprentice, by which the apprentice is bound to live with his maſter, and the maſter is bound to keep him; for this can only be done, upon the complaint of the maſter or apprentice: and continuing 40 days unremovable without notice, is the ſame thing, as continuing 40 days removable, but not removed, after notice; and conſequently the party hath gained a ſettlement. And it is poſſible that the apprentice may gain as many ſettlements, as there are ſpaces of 40 days in the term of his apprenticeſhip; and where he ſerves the laſt 40 days, there is his laſt ſettlement: Conſequently, he may gain a ſettlement long before his maſter ſhall gain one; as where his maſter's ſettlement ſhall ariſe from executing an annual office: Or, he may gain a ſettlement, whilſt his maſter ſhall gain none, as when he reſides upon a tenement under 10*l.* a year: And of conſequence, the maſter may be removed, when the apprentice cannot be removed; and in ſuch caſe the maſter ſhall be neceſſitated to apply to the juſtices, to compel the apprentice to go along with him.

This general opening of the ſtatute will make way for the ſeveral following reſolutions:

Apprentice ſettled, although the maſter have no ſettlement.

(1) *H.* 4 *An. St. Bride's* and *St. Saviour's.* A woman who was ſettled at *St. Saviour's*, with her apprentice by indenture, came and took a lodging in *St. Bride's*, and there continued above 40 days with her apprentice, who ſerved her there. This was held by the court, to be a ſettlement of the apprentice at *St. Bride's.* 2 *Salk.* 533.

(2) *M.* 8 *G.* 2. *K.* and *St. George Hanover Square. Alice Wheeler* was bound by indenture a pariſh apprentice, to *George Liſter*, in the pariſh of *St. George*, where ſhe lived above 40 days under the indenture, and gained a ſettlement: Afterwards, ſhe was by parol agreement hired out by the ſaid maſter to one *Hall* in the pariſh of *St. Mary le bone*, and there lived and lodged above 40 days, that is, for the ſpace of one year and upwards, the ſaid apprenticeſhip continuing; and the ſaid *George Liſter* her maſter received her wages, and found her cloaths: By the court, the apprentice is well ſettled in *St. Mary le bone*. Seſſ. C. V. 2. 138. *Str.* 1001. Apprentice ſerving another maſter, but not aſſigned.

E. 9 *G. St. Olave's* and *All Hallows*. A perſon is bound apprentice to a maſter who lives in *St. Olave's*: Afterwards, the apprentice by his maſter's conſent lives with another perſon in *All Hallows*. By the court; He gains a ſettlement in the laſt place; for a perſon may ſerve his maſter in another pariſh or place; and altho' he ſerves another man, yet it is by conſent of his maſter, and the benefit accrues to his maſter. *Caſes of S.* 153. *Str.* 554.

M. 3 *G.* Pariſhes of *Holy Trinity* and *Shoreditch*. *Parker* Ch. J. delivered the reſolution of the court. This is an order for the removal of one *Ferrer* from the pariſh of *Holy Trinity* to *Shoreditch*; by which it appears, that *Ferrer* was bound an apprentice to one *Truby*, with intent that he ſhould ſerve *Green*; which he did for three years: And it hath been inſiſted, that he being bound to *Truby*, who lives in *Trinity* pariſh, his ſettlement is there; and not in *Shoreditch*, where the ſervice was. But we are of opinion the juſtices have done right in ſending him to *Shoreditch*, where the ſervice actually was. It is the ſame thing as if *Truby* had turned him over to *Green*; in which caſe there would have been no queſtion, but he had gained a ſettlement in *Green's* pariſh. *Str.* 10.

(3) *E.* 10 *G. Buckington* and *Shepton Bechamp*. The maſter ran away: The apprentice hired himſelf for a year, and ſerved the year. By the court; He gained no ſettlement, not being *ſui juris*, nor of a capacity to hire himſelf; otherwiſe, had it been by conſent of his maſter, or had his indenture been cancelled. *Caſes of S.* 155. L. *Raym.* 1352. *Str.* 582. Apprentice hiring, the maſter being run away.

Note; In the *Caſes of Settlements*, this caſe is reported under the name of *K.* and *Shipton Curry*; by L. *Raymond*, under the name of *Buckington* and *St. Michael Sebington*; by Sir *John Strange*, under the name of *Packington* and *Chepton Beencham*. None of all which ſeem to exhibit the true names of the contending pariſhes, for there are no ſuch pariſhes

riſhes as moſt of thoſe here rehearſed; and therefore it is preſumed to inſert the real names of the pariſhes, which theſe appellations ſeem moſt probably to denote, namely, *Buckington* and *Shepton Bechamp*. And here it may be proper to obſerve once for all, the great inaccuracy in the names of places and perſons, which every where occurs in the books of reports, ariſing (as it ſeemeth) from two cauſes: 1. From the reporter's taking down the name in court by the ſound only, which oftentimes may cauſe a wide difference in the orthography. And, 2. From the hand-writing of the reporter perhaps not being very legible; the caſe being taken down in a hurry of the pen, and not publiſhed but by others after the reporter's death. Where the matter is very notorious, liberty hath been taken throughout this book, to reſtore ſuch broken words, to their genuine and known originals; ſo as to read inſtead of *Hedcome* or *Hedcorn*, *Hedcron*; for *Miſſerden*, *Miſſenden*; for *Trenſham*, *Frenſham*; for *Woodon*, *Woodend*; for *Yexford*, *Yokesford*; for *Eutoſcater*, *Uttoxeter*; and many other ſuch like.

Apprentice diſmiſſed, but not diſcharged, hiring for a year.

(4) The ſon was bound apprentice to his father, who afterwards gave up the indentures of apprenticeſhip, but did not cancel them: Then the ſon was hired into another pariſh for a year, and ſerved the year; and being likely to be chargeable, he was ſent by an order to the pariſh where he lived as an apprentice; becauſe, the indentures being not cancelled, he ſtill continued an apprentice there. *Mod. Ca.* 190. *Dalt.* 180.

Apprentice aſſigned by the maſter.

(5) *E.* 9 *G. St. Olave* and *All Hallows*. If a maſter aſſigns over his apprentice, and the apprentice ſerves in purſuance of that aſſignment; he thereby gains a ſettlement: and it differs not whether he ſerves with one maſter or another; for he ſtill ſerves by virtue of the firſt indenture. *Seſſ. C. V.* 1. 215.

13 *W. Caſtor* and *Aicles*. A poor child being bound at *Caſtor*, his maſter there aſſigned him over to another maſter; who lived in *Aicles*. And it was held, that the poor child ſhould gain a ſettlement at *Aicles*, where his ſecond maſter lived; for tho' the apprentice was not aſſignable, yet that aſſignment was not merely void, but amounted to a contract between the two maſters, that the child ſhould ſerve the latter. So that this aſſignment is good by way of covenant, tho' it be not an aſſignment to paſs an intereſt. 1 *Salk.* 68.

Apprentice aſſigned by the maſter's widow.

(6) *T.* 12 *G.* 2. *K.* and *Eaſt Bridgeford*. Upon a ſpecial order it was ſtated, that an apprentice upon the death of his maſter, was with his own conſent turned over by the widow

widow (who had taken no adminiſtration) to another maſter, whom he ſerved. And the court held it a good ſettlement in the laſt pariſh, within the reaſon of the caſe of *Holy Trinity* and *Shoreditch* abovementioned, where the apprentice was bound to one maſter, but ſerved another all the while in another pariſh, and there gained a ſettlement. *Str.* 1115.

(7) An apprentice well ſettled, being with a maſter removable, cannot be removed with him; but the maſter may complain on the covenant. *Caſes of S.* 211. Apprentice ſettled, not removable.

May remove him to the place where he was laſt legally ſettled for the ſpace of 40 *days at the leaſt*] *H.* 10 *G. K.* and *Cirenceſter*. There was an apprentice bound in the pariſh, who lived there off and on for three quarters of a year. Exception was taken, that this was no ſettlement, ſince he might not inhabit 40 days together. But by the court, That is not neceſſary; and the order for making it a ſettlement was confirmed. *Str.* 579. Forty days reſidence ſucceſſively not neceſſary.

If any perſon ſhall be bound] *H.* 3 *G.* 2. *Newbury* and *St. Mary's* in *Reading*. A poor boy of 14, bound himſelf apprentice for ſeven years to a weaver. It was argued, that this was not a binding according to the ſtatute, and therefore did not gain a ſettlement; and that the indenture was void, becauſe an infant could not bind himſelf. But by the whole court, It did gain him a ſettlement; for an infant may make an indenture for his own benefit. *Foley* 154. *Andr.* 373. Infant pauper binding himſelf.

Shall be bound apprentice] *H.* 9 *G.* 2. *K.* and *St. Nicholas Ipſwich*. There was an indenture of apprenticeſhip, for four years; which the apprentice ſerved accordingly: whereas the ſtatute of the 5 *El.* requires, that it ſhall not be for leſs than ſeven years. And the queſtion was, Whether this ſhould gain a ſettlement? By the whole court; This indenture was not void, but only voidable; and none could avoid it but the parties: And neither of the parties having taken advantage thereof to avoid it, the apprentice having continued under the ſame above 40 days, did thereby gain a ſettlement. *Seſſ. C. V.* 2. 162. *Andr.* 365. *Str.* 1066. Binding for four years.

By indenture] *T.* 5 *&* 6 *G.* 2. *K.* and *Mellingham*. A perſon was bound by indenture, tho' not actually indented; and the ſeſſions adjudged the ſettlement on the foot of that binding. Exception was taken, that this was a binding without indenture, and not good; and alſo whatever the writing was, the pauper was no party to it, nor could be concluded by it; and a deed poll will not bind an infant, Binding by indenture not indented.

nor a poor perſon put out by the overſeers without his own contracting, for the ſtatutes which make ſuch covenant binding upon them, do require that the binding be by indenture. And by the court; The exception muſt be allowed, and the order quaſhed. *Seſſ. C. V.* 1. 330.

Inhabitancy to be where the party lodges.

And inhabit in any town or pariſh] *M.* 11 *G. St. John Baptiſt* and *St. James's Biſhop Cannings.* Binding and ſerving will not make a ſettlement, but the ſettlement muſt be by inhabiting; which cannot be but where the party lodges. L. *Raym.* 1371. *Str.* 594.

E. 3 *G. K.* and *St. Olave's Jury.* An apprentice is bound to a cobler, who keeps a ſtall in one pariſh, lies in another, and the boy in a third; and the ſeſſions adjudge the ſettlement where the ſtall is, becauſe the ſervice was there. But by the court, The boy has gained no ſettlement in any of the three pariſhes; for the ſtall is not ſufficient to give him one, the maſter lying in another pariſh. And the order was quaſhed. *Str.* 51.

T. 3 *G. St. Mary Colechurch* and *Radcliffe.* A boy was bound apprentice to a ſeafaring man, and ſerved him for a quarter of a year in the day time on land, in the pariſh of *St. Mary Colechurch*, but lay every night on ſhipboard in *Radcliffe.* But the juſtices apprehending the ſettlement to be where the ſervice was, ſend him thither. It was moved to quaſh this order, and was likened to the aforeſaid caſe of the cobler. By *Parker* Ch. J. A man properly inhabits where he lies; as in the caſe where the houſe is in two leets, he is to be ſummoned to that in which his bed is. And the order was quaſhed. *Str.* 60. *Caſes of S.* 105. *Foley* 159.

Apprentice to a certificate perſon.

Apprentice—to a perſon reſiding under a certificate and not afterwards having gained a ſettlement] By theſe words it is evident, that if the maſter gains a ſettlement under his certificate, the apprentice is then at liberty to gain a ſettlement, as if the maſter had no certificate.

Such apprentice—ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place] *M.* 14 *G.* 2. *Dunchurch* and *Petham.* An apprentice was bound to a certificate perſon, and aſſigned by him to a perſon that lived in another pariſh, and went and lived there accordingly; and the queſtion was, whether he gained any ſettlement under ſuch aſſignment and ſervice. By the court; The ſtatute has only regard to the pariſh where the certificate perſon reſideth, to prevent the apprentices of ſuch perſons gaining ſettlements there; and whether the binding was to a certificate perſon or not, is

not

not material as to a third pariſh: and adjudged, that the apprentice gained a ſettlement. *Seſſ. C. V.* 2. 149. *Str.* 1147.

T. 13 *G.* 2. *K.* and *Eaſt Bridgeport.* A perſon was bound in one pariſh, his maſter dies, and he is aſſigned to a certificate man in another pariſh, and is afterwards aſſigned over by him to a third perſon who was not a certificate man; and the queſtion was, whether he could gain a ſettlement under this laſt aſſignment: And it was held clearly that he could. *Nelſ. Poor.*—And this third maſter might poſſibly inhabit in the ſame pariſh in which the certificate perſon lived; and the reaſon is, becauſe the apprentice in ſuch caſe is not looked upon as the apprentice of the certificate perſon, but of the executor of the firſt maſter, who was no certificate perſon.

No perſon who ſhall come into any pariſh by a certificate, ſhall be adjudged by any act whatſoever to gain a ſettlement ——unleſs he ſhall take a tenement of 10*l. a year, or execute an annual office*] *H.* 6 *G. Ivinghoe* and *Stonebridge.* Upon a ſpecial order of ſeſſions, the caſe was ſtated for the opinion of the court; that one *Richard Plewer* was bound apprentice to *John Emerton*, who was legally ſettled in *Ivinghoe*; that he ſerved part of his time there, and then the maſter went with all his family as a certificate man to *Stonebridge*, where he purchaſed an eſtate of the value of 60*l.* and after ſuch purchaſe the apprentice lived with him ſix months till the apprenticeſhip expired; and becauſe the ſtatute provides, that the apprentice of a certificate man ſhall gain no ſettlement in the pariſh to which the maſter goes by certificate, therefore the juſtices adjudge the ſettlement at *Ivinghoe*, where the binding and great part of the ſervice was. But by the court, We think the ſettlement is in *Stonebridge*; for according to the caſe of *Burclear* and *Eaſtwoodhay*, *E.* 5 *G.* when a certificate man makes a purchaſe, he immediately ceaſeth to be there in nature of a certificate man, and becomes a ſettled inhabitant: and in this caſe here is ſervice for ſix months, as an apprentice, in a pariſh where the maſter was legally ſettled, which is more than ſufficient to give a ſettlement to the apprentice. *Str.* 265.

Not available in any court or place, or to any purpoſe whatſoever] *H.* 4 *G.* 2. *Cureden* and *Leiland.* Upon a ſpecial order of ſettlement, it was ſtated, that a poor boy was bound out apprentice by indenture, and the maſter had 20*s.* paid him; that he ſerved three years; but that the maſter never paid the duty of 6*d.* in the pound according Indenture not ſtamped.

to the 8 *An. c.* 9. *ſ.* 39. which ſays, that if the duty be not paid, the indenture ſhall be void to all intents and purpoſes whatſoever. The caſe was referred to *Forteſcue* J. who went the circuit: And he held it a ſettlement, becauſe the maſter had ſix months to pay the duty in; ſo that during thoſe ſix months a ſettlement was gained; and it ſhould not be in the power of the maſter to defeat it by matter *ex poſt facto*. And purſuant to this opinion, the ſeſſions held it a ſettlement. But upon debate in the king's bench, the order was quaſhed; for they ſaid, it was making the indenture good to one purpoſe, when the act of parliament had made it void to all intents and purpoſes whatſoever. And though it was a hard caſe, they could not break through the poſitive words of the act. *Str.* 903. *Seſſ. C. V.* 2. 134. *Andr.* 364.

vi. Of ſettlement by ſervice.

In like manner as under the laſt head, I will firſt ſet down the whole law relating to the ſubject before us, and then the adjudged caſes upon the ſeveral branches thereof.

Statutes concerning ſettlement by ſervice.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint by the churchwardens or overſeers, within* 40 *days after any perſon ſhall come to ſettle on any tenement under* 10*l. a year, two juſtices* (1 Q.) *may remove him to the place where he was laſt legally ſettled either as a native, houſholder, ſojourner, apprentice, or ſervant, for the ſpace of* 40 *days at the leaſt.*

But by the 1 *J.* 2. *c.* 17. *The forty days continuance ſhall not make a ſettlement, but from the time of delivering notice in writing.*

And by the 3 *W. c.* 11. *From the publication of ſuch notice in the church.*

But by another clauſe in the ſaid act of the 3 *W. If any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year; ſuch ſervice ſhall be adjudged and deemed a good ſettlement therein, tho' no ſuch notice in writing be delivered and publiſhed.*

And by the 8 & 9 *W. c.* 30. *Whereas ſome doubts have ariſen touching the ſettlement of unmarried perſons, not having child or children, lawfully hired into any pariſh or town for one year, it is enacted and declared, that no ſuch perſon ſo hired as aforeſaid, ſhall be adjudged or deemed to have a good ſettlement in any ſuch pariſh or townſhip, unleſs ſuch perſon ſhall continue and abide in the ſame ſervice during the ſpace of one whole year.*

By the 12 *An. ſt.* 1. *c.* 18. *If any perſon after* June 24. 1713. *ſhall be a hired ſervant with any perſon, who did come into, or ſhall reſide in any pariſh, townſhip, or place, by means or licence of a certificate, and not afterwards having gained a legal ſettlement in ſuch pariſh, townſhip, or place, ſuch ſervant ſhall not gain any ſettlement in ſuch pariſh, townſhip, or place, by reaſon of ſuch hiring or ſervice, but ſhall have his ſettlement as if he had not been an hired ſervant to ſuch perſon.* ſ. 2.

And by the 9 & 10 *W. c.* 11. *No perſon who ſhall come into any pariſh by a certificate ſhall be adjudged by any act whatſoever, to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall* bona fide *take a leaſe of a tenement of* 10*l. a year, or ſhall execute an annual office in ſuch pariſh:* (And conſequently ſhall gain no ſettlement by ſervice.)

On complaint within 40 *days*] By the ſtatute of *C.* 2. perſons became ſettled, if not removed in 40 days. But whereas people came privately into pariſhes, and continued perhaps 40 days, before they were publickly known to be there; therefore the ſtatute of the 1 *J.* 2. did provide, that ſuch 40 days ſhould not gain a ſettlement, but after the time of delivering notice in writing to the overſeers, that ſuch perſon was come to inhabit in ſuch pariſh. And whereas in that caſe, the overſeer to whom ſuch notice ſhould be delivered, either thro' ignorance or wilfulneſs, might conceal ſuch notice from the inhabitants; therefore the 3 *W.* did provide, that ſuch 40 days ſhould be accounted from the time of the publication of ſuch notice in the church, and not otherwiſe. But then by the ſubſequent clauſe of the ſtatute of the 3 *W.* it is enacted, that *if any unmarried perſon, not having child or children, ſhall be lawfully hired into any pariſh or town for one year, ſuch ſervice ſhall be adjudged a good ſettlement therein, tho' no ſuch notice in writing be delivered and publiſhed:* And the reaſon thereof is this, becauſe that ſuch notice would not avail; for that the juſtices, upon complaint of the overſeers, who are no parties to the contract, cannot make void the contract between the maſter and ſervant, by which the ſervant is bound to continue with his maſter, if he requires it. And therefore upon this act, if the ſervant was hired for a year, and ſerved 40 days under that hiring, he was not removeable, and gained a ſettlement; and ſo in every place where he ſerved 40 days under ſuch hiring, he there gained a ſettlement; and where he ſerved the laſt 40 days, there was his laſt ſettlement. But this eaſy method of acquiring ſettlements, cauſing ſervants to become inſolent, at laſt the ſtatute of

General expoſition of hiring and ſervice.

the 8 & 9 *W.* was made, which enacteth, that *no ſuch perſon ſo lawfully hired into any pariſh or townſhip ſhall be adjudged to have a good ſettlement there, unleſs he ſhall continue in the ſame ſervice during the ſpace of one whole year.* But if he ſhall continue in ſuch ſervice during the ſpace of one whole year, his ſettlement in all other reſpects ſhall be as before; that is to ſay, every continuance of 40 days unremovable during ſuch ſervice for the year ſhall be deemed a ſettlement; and where he continues the laſt 40 days, there is his laſt ſettlement. But there hath been much doubting, what ſhall be deemed a hiring for a year, and alſo what ſhall be deemed a ſervice for a year, within the ſenſe of theſe ſtatutes; and what relation ſuch hiring and ſervice ſhall bear to each other: The arguments for and againſt which on each ſide, in the adjudged caſes hereafter following, will be the better underſtood, from this ſhort hiſtorical account which hath been given, of the progreſs of the law relating to this matter.

Whether the ſervant may be removed from the maſter.

Two juſtices (1 Q.) *may remove him*] But it hath been obſerved before, that the juſtices, upon the complaint of the pariſh officers, cannot remove the ſervant from his maſter; becauſe they cannot upon ſuch complaint diſſolve the contract betwixt the maſter and his ſervant, to which contract the officers are no parties; for that can only be done upon the complaint of the maſter or ſervant. Therefore if a maid ſervant ſhall happen to be with child, which child is likely to be born a baſtard; yet if her maſter is willing to keep her, the pariſh cannot remove her; but the maſter, if he pleaſes, may complain to a juſtice of the peace, that ſhe is leſs able to perform the ſervice, and the juſtice may diſcharge her, and then the pariſh by order of two juſtices may remove her.

But altho' regularly the ſervant cannot be removed from the maſter, yet the maſter may be removed from the ſervant; as if the ſervant hath gained a ſettlement in the pariſh, and the maſter hath gained none, which may often happen, the ſettlement of the ſervant no way depending upon the ſettlement of the maſter: In ſuch caſe, if the pariſh will remove the maſter, they cannot remove the ſervant; but the maſter may complain to the juſtices, who may compel the ſervant to go along with him.

Unmarried perſon.

If any unmarried perſon, not having child or children] Here are two points conſiderable; one is, where a widower has a child, which hath gained a ſettlement of its own, diſtinct from the father's ſettlement; the other is, when a perſon unmarried is hired, and marries before the year's ſervice is compleated.

(1) *E.* 10 *An. Antony* and *Cardigan.* A man having a daughter, which daughter was married and ſettled elſewhere, hired himſelf for a year, and ſerved the year: By the court, he is a ſingle perſon within the meaning of the act, tho' not expreſly within the letter of it. The meaning of the ſtatute was, that he might not bring any conſequential damage to the pariſh, which he cannot poſſibly do here. And they held that the man, notwithſtanding he had a child, gained a ſettlement by virtue of that ſervice. *Caſes of S.* 7. *Foley* 131. Unmarried perſon having a child ſettled elſewhere.

(2) *E.* 1 *An. Faringdon* and *Witty.* A ſervant hired for a year, ſerved half a year of the time, and married. The queſtion was, Whether the juſtices, on complaint of the overſeers, could make an order to remove him to the place of his laſt legal ſettlement? By the court, The contract between the maſter and ſervant was not diſſolved by the marriage; and admitting it might be diſſolved by an order made on complaint of the maſter, yet without that, and upon complaint of the officers only, it could not be diſſolved. And the marriage doth not hinder the ſervice; the contract continues; and if the man performs his ſervice, he gains a ſettlement. 2 *Salk.* 527. Servant marrying during the ſervice.

The ſame reſolved, *M.* 1 *G.* 2. *K.* and *Sutton. Seſſ. C. V.* 2. 121.

And the reaſon hereof perhaps might be this; The ſtatute of the 3 *W.* ſays, if ſuch unmarried perſon ſhall be hired for a year, *ſuch ſervice* ſhall gain a ſettlement; that is, a ſervice for forty days: and the latter ſtatute doth not cauſe this 40 days ſervice to be no ſettlement, but only ſuſpends the ſame, until it ſhall appear, whether the party ſhall ſerve out his year; and if he doth ſerve out the year, then ſuch 40 days ſervice is a good ſettlement. So that in this caſe, it may ſeem, that the ſettlement in effect was obtained before the marriage. It doth not appear what would have been the event, if the ſervant had married before he had ſerved 40 days. If he ſhould be deemed in ſuch caſe to have gained no ſettlement, then it will follow, that a ſervant marrying, after he hath ſerved a conſiderable part of the year, ſhall be ſettled where he ſerved the laſt 40 days before ſuch marriage, provided he ſerves out the year. But concerning this, there hath been no adjudication.

But ſince it is evident from the caſes abovementioned, that ſuch marriage will not regularly hinder the ſervant's ſettlement, if the pariſh would be rid of him, it muſt be upon complaint of the maſter to a juſtice of the peace, that by ſuch marriage he is become leſs fit for his ſervice; and if

the juſtice ſhall ſee cauſe to diſcharge him, he may after ſuch diſcharge be removed by order of two juſtices to his place of ſettlement.

But there is one caſe, wherein ſuch marriage of it ſelf will defeat the ſervice, and conſequently the ſettlement thereby; and that is, where the maid ſervant is married to her maſter, or the man ſervant marries his miſtreſs: for there the contract of ſervice is determined by the parties themſelves.

Whether the hiring for a year ſhall be by one intire contract.

Shall be lawfully hired into any pariſh or town for one year] Theſe words do introduce one great ſubject of debate, namely, What ſhall be deemed a ſufficient *hiring for a year* within theſe ſtatutes, by virtue whereof a perſon ſhall be intitled to gain a ſettlement? Concerning which it hath been reſolved as follows:

H. 10 *W. Bayly*'s caſe. A maid ſervant contracted to ſerve from *Lady-day* till *Michaelmas* following; which ſhe did accordingly: and then made a new contract with the ſame maſter, to ſerve him for a longer time; and accordingly did ſerve him upon that contract, till *April* following; in all, above a year. And by the court, Tho' this was not an intire contract for a year, yet it gained her a ſettlement. 3 *Salk.* 257.

On the contrary, in the caſe of *Horſham* and *Shipley*, *M.* 12 *An.* A perſon was hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and ſo on again another year: The queſtion was, whether this gained a ſettlement? And the court were of opinion, it did not; for they ſaid the hiring muſt be for a year. *Foley* 134.

And more expreſly, in the caſe of *Dunsfold* and *Ridgwick*, *M.* 9 *An.* A perſon was hired for half a year, and after that was hired again for another half year, with the ſame perſon, and thereupon ſerved a year in one continued intire ſervice, but by ſeveral hirings. By the court; It ought to be one intire contract, and one intire ſervice; the one is required by the ſtatute, as well as the other. If a ſervice under ſeveral contracts ſhall gain a ſettlement, one that ſerves by the month, by the week, or by the day, may, if he continues a year, gain a ſettlement. One may hire by the day, for charity; but there is danger of being chargeable in hiring ſuch a perſon by the year. For ſuch a term as a year, it is not ſuppoſed a maſter would hire one, unleſs able of body, and ſo a perſon not likely to become chargeable. 2 *Salk.* 535.

Perhaps it may add ſome weight to the ſcale in favour of this latter opinion, if we attend to the following obſervation;

tion; namely, That altho' the *ſervice* for a year depends upon the ſtatute of the 8 & 9 *W.* which makes ſuch ſervice neceſſary to gain a ſettlement, yet the *hiring* for a year depends ſolely upon the ſtatute of the 3 *W.* upon which ſtatute the law was this, that if a perſon was hired for a year, and ſerved 40 days, he gained a ſettlement. But no one will ſay, that if he was hired for half a year, and ſerved forty days, he ſhould thereby gain a ſettlement; for that is againſt the ſtatute. And the 8 & 9 *W.* hath made no alteration at all as to the hiring, but only lengthened the time of the ſervice.

Moreover, the word *lawfully* ſeems to be of ſome conſideration. The ſtatute ſays, if ſuch perſon *ſhall be lawfully hired for one year*; and the following ſtatute, reciting the *lawful hiring*, ſays, if ſuch perſon *ſhall be ſo hired as aforeſaid:* Now what is a *lawful* hiring? Not a hiring for half a year; for that is by virtue of no law. On the contrary, Lord *Coke* (1 *Inſt.* 42.) ſays, if a man retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. The ſtatute of 5 *El.* ſays, that no ſervant, as therein mentioned, ſhall be hired *by any means or colour for leſs time than one whole year.* The ſtatute of the 2 & 3 *P.* & *M.* concerning the highways, ſays, that all perſons *not being hired ſervants by the year* ſhall be liable to work at the highways. The ſtatute of the 20 *G.* 2. ſays, that if a ſervant *hired by the year* ſhall complain to a juſtice upon the retainer, he may be relieved. And in general, the law never looks upon any perſon as a *ſervant*, who is hired for a leſs term than one whole year; otherwiſe they come under the denomination of *labourers.* Now being *lawfully* hired, can mean nothing elſe, but being hired *according to law.* And being hired *according to law*, is the being hired *for one whole year*, and not otherwiſe.

Concerning this hiring for a year, theſe other reſolutions have been made: *viz.*

(1) *T.* 3 *G. Ranton* and *Haughton.* Order ſpecially ſtated: *John Evans* was hired with *Ralph Trubſhaw* of *Haughton*, from *Aſh-Wedneſday* till *Chriſtmas*, and ſerved him that time. Then he went away from him, and ſtaid with his father in *Ranton*, for about a week. Then he returned to the ſaid *Ralph Trubſhaw*, and was again hired with him for 11 months, and ſerved him the ſaid 11 months: Then departed from the ſaid *Ralph Trubſhaw*, and took his cloaths with him, and was abſent one week. Then he returned to the ſaid *Ralph Trubſhaw*, and was hired with him for eleven months, and accordingly ſerved him; and

Hiring for eleven months.

and then left that ſervice, and went to his father in *Ranton*, and ſtayed about one week. Then the ſaid *John Evans* ſerved one *John Sutton* of *Haughton* aforeſaid for about 3 weeks; then returned to *Ranton* aforeſaid, and ſtayed for about a week: and then returned to the ſaid *John Sutton*, and hired with him for 11 months, and ſerved within a fortnight or 3 weeks of the laſt 11 months, where, by agreement with the ſaid *John Sutton*, to avoid a ſettlement in the pariſh of *Haughton* aforeſaid, he left him, took his cloaths, and went into the pariſh of *Gnoſall*, and there continued about a week; then returned to the ſaid *John Sutton*, and continued with him ſo long as to make up his ſervice of the laſt 11 months; and 3 weeks before *Chriſtmas*, the ſaid *John Evans* hired himſelf again to the ſaid *John Sutton*, for another 11 months, and ſerved him from that time, till within 3 weeks of *Michaelmas* following, and then came away and married. The queſtion was, Whether theſe ſeveral hirings were ſufficient to gain a ſettlement in the pariſh of *Haughton? Parker* Ch. J. ſaid, this was an apparent fraud, and different from all the other caſes. *Pratt* J. ſaid, I doubt we muſt take the law to be, that there muſt be a hiring for a year, and a ſervice for a year: Here the ſeſſions have found it ſpecially, and there is neither hiring nor ſervice for a year: And ſuppoſe a man that lives in a pariſh incumbred with poor, hires a ſervant for 11 months only, to prevent his gaining a ſettlement, how can this hiring and ſervice gain a ſettlement? And as to the fraud, if there is any, the juſtices of the peace are judges of that. *Eyre* J. was of the ſame opinion with *Pratt* J. *Powis* J. being abſent. Afterwards, in *Eaſter* term, after long debate and conſideration, the opinion of all the court, was, That theſe hirings and ſervice in the pariſh of *Haughton* were not ſufficient to gain a ſettlement. *Fol.* 137. *Str.* 83.

Hiring a few days after Michaelmas to Michaelmas.

(2) *E.* 5 *G.* 2. *K.* and *South Cerney.* At *Northleach*, are annually held two meetings for the hiring of ſervants, the one on the *Wedneſday* before *Michaelmas*, the other on the *Wedneſday* after. The pauper was hired the *Wedneſday* after *Michaelmas*, to ſerve to *Michaelmas* following; which he did. It was urged, that this being a hiring according to the courſe and cuſtom of the country, was a ſufficient ſettlement. But by the court; This is no ſettlement upon the face of it; there muſt be a hiring for a year, and that cannot be diſpenſed with. *Seſſ. C. V.* 1. 156.

H. 5 *G. Combe* and *Weſtwoodhay. Michaelmas-day* was on *thurſday*; and a perſon was hired upon the *ſaturday* following, to ſerve till *Michaelmas:* And it was held to be inſufficient

ſufficient to gain a ſettlement, being not a hiring for a year. *Str.* 143.

(3) *M.* 1 *G. Peperharow* and *Frenſham.* A perſon is hired the third of *October* to ſerve till *Michaelmas* following, and at *Michaelmas* the maſter ſays, ſtay two or three days, and I will pay you. Adjudged a ſettlement, becauſe fraudulent; and if this were allowed, there would be no ſuch a thing as a ſettlement; for every perſon would hire a ſervant two or three days after the quarter day, purely to evade the ſtatute. *Caſes of S.* 80. *Lu. Ca. in L. & E.* 293. Hiring for 2 or 3 days ſhort.

(4) *T.* 13 *An. Jeſſop* and *Miſſenden. Sarah Barnes* lived with her father for a year as a hired ſervant, in a little cottage upon the waſte, for 10*s.* a year, beſides what ſhe could get by her ſervice and labour. And whether ſhe gained a ſettlement thereby, was the queſtion. And the whole court held ſhe did; there is no ground of fraud; for it was to live with her father, who might be grown old. *Fol.* 142. Hiring with one's father.

(5) *T.* 13 *G.* 2. *King's Norton* and *Campden.* Order ſpecially ſtated. *Mary Calcut* was hired for a year, to ſpin yarn at 18*d.* a ſtone; and was to provide herſelf with victuals and lodging. She ſpun the whole year, and boarded and lodged at her maſter's, allowing 2*s.* a week for the ſame: but upon her examination ſhe ſaid, that by her contract ſhe thought her ſelf at liberty to play or be abſent from her work as long as ſhe pleaſed, only that ſhe was not at liberty to work for any other maſter. By the court, This caſe hath all the requiſites of the ſtatute, and is a good ſettlement: for in fact here is a hiring and ſervice for a year; and what her apprehenſion was, or whether ſhe was paid by the year or by the quantity of her work, was immaterial. *Str.* 1139. *Seſſ. C. V.* 2. 146. Hiring to ſpin at ſo much a ſtone.

(6) *T.* 6 *G.* 2. *Lidney* and *Stroude.* Upon a ſpecial order of ſeſſions, it was ſtated, that a maid was hired for a quarter of a year, and if ſhe and her maſter liked one another, ſhe was to continue the whole year, and have 3*l.* for her year's wages; that ſhe ſtaid the year out, and had her 3*l.* And this on debate was held to be a ſettlement. *Str.* 950. Hiring conditionally.

H. 8 *G.* 2. *Chipping Wycombe* and *New Windſor.* A perſon was hired to go a month on liking, at 5*l.* a year wages, but to part on a month's wages, or a month's warning on either ſide; and continued under this agreement above a year in this ſervice, and the wages were paid quarterly. And adjudged a good ſettlement. *Seſſ. C. V.* 2. 163.

H. 16 *G.* 2. *Atherton* and *Barton.* A perſon hires himſelf for a year at 4*l.* wages, and either maſter or ſervant to be at liberty to determine the contract at the end of any quarter, upon a month's notice. And it is ſtated, that he ſerved the year out, but that at the time of the hiring the ſervant declared, he made the agreement in that manner, to prevent loſing his former ſettlement. And upon this caſe, the two juſtices and ſeſſions held it no ſettlement. But the court on debate quaſhed both the orders; for this is the common ſort of hiring for a year, with an intention to ſtay together (as in fact they did); and if this ſhould be determined not to gain a ſettlement, it would overturn great numbers of ſettlements that ſubſiſt on ſuch hirings. *Str.* 1182.

Hiring by implication.

(7) *E.* 13 *G.* 2. *Wandſworth* and *Putney.* A boy came to live with Mr. *Falkner* without any hiring; and then his maſter told him, that if he ſtayed a year and behaved well, he would give him a livery and wages the next year. He lived there one year and four months, and received a guinea and a half wages. The court inclined to think, that this was a conditional hiring, and that the boy's ſervice was an aſſent in fact, and that it gained a ſettlement; but referred the matter back to the ſeſſions to be more fully ſtated. *Seſſ. C. V.* 2. 188.

Service where no contract did appear.

(8) *M.* 13 *G.* A young woman lived with her grandmother for four years, on an allowance of meat, drink, waſhing, and lodging. But there appearing no contract betwixt the grandmother and the girl, but that ſhe might have left the grandmother at any time, it was adjudged not a hiring within the ſtatute. *Seſſ. C. V.* 2. 120.

What ſhall be deemed a ſervice for a year.

Unleſs ſuch perſon ſhall continue and abide in the ſame ſervice] What ſhall be deemed the *ſame ſervice* within the meaning of this explanatory ſtatute, hath been much controverted. Concerning which there have been the following reſolutions:

Hiring for a year, and ſervice for a year, but not under the ſame hiring.

(1) Within about a year after this ſtatute of the 8 & 9 *W.* was made, was the following adjudication; *H.* 10 *W.* Caſe of the inhabitants of *South Moulton.* A maid ſervant was hired for half a year; which time ſhe ſerved: and then for another year, and ſerved half of that. *Rokeby*, *Turton*, and *Gold* (*Holt* Ch. J. being abſent) held it to be a ſettlement; becauſe the ſtatute deſigned only that the party ſhould ſerve a year. L. *Raym.* 426.

Another caſe in the ſame term is cited by Mr. *Blackerby* and others, under the name of *Stephenton* and *Overton*, where there was a hiring and ſervice from *Lady-day* to *Michael-*

Michaelmas, and then a hiring for a year from *Michaelmas* to *Michaelmas*, and a ſervice for half that year; and it was adjudged a good ſettlement. But whether the chief juſtice in this caſe was preſent in court, or whether this is the ſame caſe with the former, under a different name (which ſometimes happeneth in the books of reports) doth not appear. Which is only obſerved in this place, for that no other caſe hath occurred, wherein this point came in queſtion during the time of Lord Ch. J. *Holt*, whoſe opinion controuls a very great number of caſes about ſettlements, the laws having been made, and the doubts thereupon having happened in his time.

The next caſe wherein the like was adjudged, was in the time of L. Ch. J. *Parker*, *viz.* that of *Brightwell* and *Weſthallam*. *E.* 1 *G.* There was a hiring and ſervice from 3 weeks after *Michaelmas* to *Michaelmas*, and then a hiring for a year, and ſervice for 11 months. The Ch. J. ſaid, If there was a ſervice for a year, on a hiring from week to week, and then a hiring for a year, and ſerving for 40 days, that he ſhould adjudge that a ſettlement. The reaſon is, becauſe till the laſt ſtatute was made, an hiring for a year, and 40 days ſervice made a ſettlement; in regard that the hiring for a year ſhewed that the perſon was not likely to become chargeable, for that he was able to work. So 40 days is a good ſettlement to an apprentice, in reſpect of his ſkill and art, by which he is ſuppoſed unlikely to become chargeable. So a perſon that has paid pariſh dues, or ſerved offices in a pariſh, gains a ſettlement by 40 days, becauſe he is ſuppoſed a perſon of ſubſtance, unlikely to become chargeable. But the late act requiring ſervice for a year, as well as an hiring, we think it ſufficient if the words be anſwered, conſidering this with the deſign of the former ſtatutes. *Seſſ. C. V.* 1. 87. *Foley* 143.

On the other hand, in the caſe of *Dunsford* and *Rudgwick*, *M.* 9 *An.* in the firſt year of Lord Ch. J. *Parker*, Mr. *Foley* ſays, the court declared, that there ought to be one intire contract, and one intire ſervice for a year, purſuant to that contract. *Foley* 133.

And Mr. *Blackerby*, in reciting that caſe, ſays, it was then held, that there muſt be one intire hiring, and one intire ſervice in purſuance of ſuch hiring, for a whole year, that muſt make a ſettlement. *Black.* 244.

But it muſt be obſerved, that this was not properly the point in queſtion; for the queſtion there was, whether a hiring for two half years ſhould be deemed a ſufficient hiring, and not what ſhould be a ſufficient ſervice under ſuch hiring.

We

We proceed therefore to the caſe of *K.* and *Aynhoe*, *M.* 1 *G.* 2. A perſon was hired for a quarter of a year, and ſerved that term; then he was hired for a whole year, and ſerved three quarters. And this was adjudged a ſettlement. There was cited for it, *Brightwell* and *Weſthallam*, *Overton* and *Stephenton*. Lord Ch. J. *Raymond* ſaid, the caſe of *Weſthallam* was expreſs to the point, and he would not break into it; but if it had been *res integra*, or a caſe not adjudged before, he ſhould have thought it ill. Here the ſervice was made previous to the hiring for a year. The greater part of the judges thought this caſe to be againſt the ſtatute, but that they were more ſtrongly bound by the precedent; and were unwilling to ſet aſide a reſolution ſolemnly adjudged, tho' not according to their own opinion. *Seſſ. C. V.* 2. 119. *Fol.* 144.

And this being ſettled, there followed the caſes of *Hanmer* and *Elleſmere*, *M.* 4 *G.* 2. *Eardiſland* and *Lempſter*, *H.* 6 *G.* 2. *Fyfield Magdalen* and *Weſtower*, *M.* 11 *G.* 2. wherein a hiring and ſervice for part of a year, and then a hiring for a year, and ſervice for ſo much of that year as made up a year's ſervice in the whole, were adjudged ſufficient ſettlements.

But whatever may be the rule in the court of king's bench, where the matter ſeems now to be ſettled in a good meaſure, upon the authority of *Brightwell* and *Weſthallam* as above mentioned; it is certain the point is far from being ſettled among the juſtices in the ſeveral counties. And in truth, the reaſons on the one hand may to many perſons ſeem as ſtrong, as the reaſons on the other. For it is certain, there can be no lawful ſervice, but under a lawful hiring; and if there can be no lawful hiring but for one intire year, it ſhould ſeem that there can be no lawful ſervice but for one intire year, purſuant to ſuch lawful hiring. And the caſe of *Brightwell* and *Weſthallam* ſeems to proceed upon a ſuppoſition, that nothing more is required by the ſtatute, but *hiring for a year and ſervice for a year*; whereas the words of the ſtatute are, that the party ſhall be *hired for a year*, and ſhall continue and abide in the *ſame ſervice* during the ſpace of one whole year: and it doth not ſeem very evident, how with any propriety of language, part of one ſervice and part of another ſervice can be called the *ſame ſervice:* And it ſeems a little abſurd, as lord *Raymond* obſerved in the caſe of *Aynhoe* abovementioned, that the ſervice ſhould begin before the hiring; for upon the former ſtatute, of the 3 *W.* the law was not, if a man ſhould firſt ſerve for ſome certain time, and afterwards be hired for a year, and under ſuch hiring ſhould ſerve ſo long as would make up the former ſervice to forty days in

the whole, he ſhould thereby gain a ſettlement, no more than if an apprentice had been bound and ſerved only 20 days under the indenture, he ſhould have become ſettled thereupon, by adding 20 days which he had ſerved before the binding, to the 20 days which he had ſerved after: But the ſtatute of the 3 *W.* required firſt a hiring for a year, and then a ſervice for 40 days under that hiring: and this ſtatute of the 8 & 9 *W.* makes no alteration therein at all, but only by enacting that the ſaid 40 days reſidence ſhall not gain a ſettlement, unleſs the party ſhall continue in the *ſame ſervice* for the ſpace of one whole year——Not to mention, that for any thing which appears in the caſes as above recited, the authority of *Brightwell* and *Weſthallam* became eſtabliſhed, not ſo much from the inconteſtable evidence of the thing it ſelf, as from the unwillingneſs of the court to unſettle a point once ſolemnly eſtabliſhed, in order that things may at length come to a certainty. But as in fact the caſe is very far from being ſettled among the juſtices in the country, it would ſpare much trouble in removals and appeals, if the parliament by another explanatory law would finally declare, what ſhall be deemed a lawful hiring, and what ſhall be deemed a lawful ſervice, ſo as to gain a ſettlement.

Same ſervice, but not with the ſame maſter.

(2) *E.* 4 *G. Ivingoe* and *Solebury.* A perſon was hired for a year to one *Knight*, who rented a farm in *Ivingoe*, and lived with him half a year: The maſter lets the farm to one *Smith*, and the ſervant lives the reſidue of the year with *Smith* in the farm, without any words paſſed about diſſolving the contract with *Knight*, or making any new contract with *Smith*. And at the end of the year, the ſecond maſter paid him his wages. The queſtion was, if this ſhall be deemed the *ſame ſervice*, ſo as to gain a ſettlement. By *Pratt* Ch. J. and the court; This is a good ſettlement: If a maſter command his ſervant to live with another for a certain time, it is a ſervice to the firſt maſter; and here being no new contract, it is carrying on the ſervice of the firſt maſter. And the ſubſequent maſter paying his wages, did not alter the caſe; for the contract not being deſtroyed, he might have brought an action againſt the firſt maſter. *Seſſ. C. V.* 1. 121. *Caſ. of S.* 109. *Str.* 90.

E. 17 *G.* 2. *Beckles* and *Leowſtoff.* A perſon was hired to a blackſmith for a year, at 3 *l.* a year. During the year, the maſter gave him leave to work with another ſmith for three days, with another for a week, and with a third for a fortnight, and agreed the ſervant ſhould have the advantage of it; after which he returned and ſtaid out the year, and the maſter by his conſent deducted the proportion

tion of wages for the time he was away: And upon this ſtate of the caſe, the ſeſſions held no ſettlement was gained, the firſt contract being diſſolved. But by the court, The order muſt be quaſhed, for this is not a diſſolution of the contract, but a licence to be abſent; and both parties conſidered it ſo, by continuing together to the end of the year. *Str.* 1207.

E. 15 *G.* 2. *Ladeck* and *St. Enoder*. A perſon was hired for a year, and ſerved half a year; when the maſter died: the executor who lived in another pariſh, aſked the ſervant if ſhe would ſerve out the year with him: ſhe did ſo. And now, on the authority of the caſe of *Ivinghoe*, the court held it a ſettlement in the executor's pariſh; for the laſt ſervice is not to be conſidered as a new agreement, but a continuation of the firſt. *Str.* 1164.

Same ſervice, but not in the ſame place.

(3) *E.* 11 *G. K.* and *Whitechappel*. A perſon was hired for five years, to work at a glaſs-houſe in *Whitechappel*, at the rate of 10*s.* a week; but never lodged with his maſter in the houſe any part of the time, but at another houſe in the pariſh: By the court, he has gained a ſettlement there; for being hired to ſerve above a year, and having ſerved and reſided in the ſame pariſh purſuant to ſuch hiring, he hath fully complied with the ſtatute, and it is not material where he lodged, ſo that it were within the pariſh. *Seſſ. C. V.* 2. 114. *Foley* 146.

T. 12 *An. Silverton* and *Aſhton*. A ſervant maid was hired for a year in the pariſh of *Aſhton*, where ſhe ſerved half a year; then her maſter, and ſhe with him, removed to the pariſh of *Patſhall*, where her maſter took another farm; the ſervant continued with him in the pariſh of *Patſhall* for the other half year: And the queſtion was, whether ſhe gained any ſettlement in either of theſe places; and if ſhe did, in which of them? By the court; Here is what the act requires, a hiring for a year, and a ſervice for a year. For it is the ſame ſervice; and the ſtatute doth not tie it down to one place. If a perſon is hired to a maſter in one pariſh, and goes with him into another pariſh, and ſerves him for one whole year; the pariſh he continues laſt in for 40 days before the end of his year, is the place of his ſettlement: and the reaſon why the 40 days gains a ſettlement is, becauſe he comes there with his maſter, and you cannot remove him from his maſter, and having continued with him 40 days unremovable, he gains a ſettlement. *Foley* 188. *Caſ. of S.* 23.

T. 8 *G. St. Peter's* in *Oxford* and *Chipping Wycombe*. Upon a ſpecial order of ſeſſions it appeared, that the maſter of the *Oxford* ſtage coaches hired a ſervant for a year, to

ſtay

ſtay in an inn in *Wycombe* where the coach baited, and to take care of the horſes: he lived there for the whole year, and the maſter all the while lived in *Oxford*. The queſtion was, Where that ſervant gains a ſettlement, or whether any by that ſervice: And by the whole court, he gained a ſettlement in *Chipping Wycombe*, though his maſter never lived there. *Str.* 528. *Foley* 200.

H. 1 *G.* 2. *Biſhop's Hatfield* and *St. Peter's* in *St. Alban's*. There was an order of two juſtices, to remove *Henry Langley* from *Hatfield* to *St. Peter's*. Upon appeal to the ſeſſions, they ſtate the caſe ſpecially, that *Langley* was hired in *St. Peter's* by Mr. *Arnold* (who had no ſettlement there) for one year, to ſerve as his huntſman; that Mr. *Arnold* had a dog kennel in *St. Peter's*, where *Langley* was dieted and ſerved the year; but inaſmuch as Mr. *Arnold* himſelf had no ſettlement there, they vacate the order which ſent him to *St. Peter's*. But by the court, The order of ſeſſions muſt be quaſhed; for this is exactly the caſe of the ſervant employed on the road, to look after ſtage horſes belonging to one who lived elſewhere, and yet the ſettlement was adjudged to be where the ſervice was. *Str.* 794.

T. 8 *G. St. Peter's* in *Oxford* and *Fawley*. Dr. *Clavering's* ſiſter lived with him at *Chriſt Church*, and hired a ſervant for a year, who was ſettled in *St. Peter's*. His ſiſter afterwards goes to *Fawley* upon a viſit; and ſhe, with her ſervant, ſtaid there for three months, and afterwards came back again to *Chriſt Church*, where the ſervant ended the year's ſervice, being not 40 days after her return. The queſtion was, Whether this ſervant gained any ſettlement at *Fawley*, living with her miſtreſs who was only a viſitor? And by the whole court; The ſettlement of the ſervant doth not at all depend on the ſettlement of the maſter; for if a maſter hire a ſervant for a year, and after remove from one pariſh to another during that year, it may be properly ſaid that the ſervant is hired in every pariſh he ſhall go into with his maſter; and the pariſh where he lives with his maſter the laſt 40 days of his year, is the place of his ſettlement. And it is not material to the ſervant, whether the maſter goes there under the capacity of gaining a ſettlement for himſelf or not; the ſervant goes there in the capacity of a ſervant: and it is like the caſe of a ſchool-boy; he gains no ſettlement, but the ſervant that waits upon him will. And it was adjudged that the ſervant was ſettled at *Fawley*. *Caſ. of Settl.* 105. *Foley* 194. *Str.* 524.

E. 30 *G.* 2. *K.* and *Alton.* The queſtion was, whether a ſervant reſiding for 40 days with his maſter at *Scarborough*, who went thither for his health or amuſement, during the ſeaſon of publick concourſe there, ſhall be deemed thereby to gain a ſettlement. And it was determined that he ſhall not. And the difference between this and the caſe laſt aforegoing ſeemeth to be this; that a viſitor, during the time of the viſit, may be conſidered as part of the family of the perſon viſited, and hath there *pro tempore* his home and place of abode; but a perſon at *Scarborough* or other ſuch like place of publick reſort, under the circumſtances before mentioned, is only a ſojourner, or in the nature of a traveller, or as a gueſt in an inn, and cannot in any ſenſe within the words of the ſtatute be looked upon as *coming to ſettle* there.

E. 4 *G.* 2. *Goring* and *Moleſworth.* A perſon was hired for a year, and ſerved the year. The perſon, to whom he was hired, lived at *Goring*, and kept a boat which navigated from *Goring* to *London*, but the ſervant was not 40 days in the whole year at the pariſh of *Goring*, but ſerved out the year on board the boat. By the court; This was no ſettlement at *Goring*. *Seſſ. C. V.* 1. 327. *Caſ. of S.* 219.

T. 18 *G.* 2. *St. Peter's* in *Sandwich* and *Goolaſton.* A ſervant was hired for a year, during which he, with his maſter's leave, went to ſea upon the herring fiſhery, but hired another to do his work in the mean time: he returned at the end of three weeks after the expiration of his year, ſettled with his maſter, and received his whole year's wages. This the ſeſſions held was not a ſervice for a year; but the court held it a ſettlement; ſaying, he was to be conſidered all the while as in the ſervice of his maſter, and the perſon he found to do his work was his ſervant, and not the maſter's; wherefore the order was quaſhed. *Str.* 1232.

Same ſervice within 3 weeks; by a covenant ſervant.

(4) *M.* 1 *G. Pawlett* and *Burnham.* A perſon was a covenant ſervant for a year, but went away three weeks before his year was out, by his own and his maſter's conſent; and was abated 6*s.* of his year's wages for it. It was objected, that being a covenant ſervant, this doth import that it was by deed, and then the conſent cannot diſcharge the covenant. By the court; Here is no fraud expreſſed or implied. It is not within the words of the act, nor the meaning. Can a man compel his ſervant to gain a ſettlement *nolens volens?* As to the covenant being by deed, and ſo the ſervice continuing, perhaps he might bring an action on the covenant, and as to that point the ſervice continued; but not as to gain a ſettlement, where the ſtatute

ſaith

ſaith he muſt ſerve for a year, which is not in this caſe. *Caſ. of S.* 84. *Foley* 187. *Seſſ. C. V.* 1. 71.

(5) *M.* 9 *G.* 2. *Seaford* and *Caſtle Church.* On a ſpecial order of ſeſſions, it was ſtated, that a perſon was hired for a year, which he ſerved till the laſt 12 days, when he went away without the maſter's leave, and ſtaid till after the year was up, when he returned for his cloaths, and was paid the whole year's wages. And on conſideration, that if they once allowed this abſence for 12 days at the end of the year (which differed from an abſence in the middle of the year, which was purged by taking him again) they ſhould not know where to ſtop, it was determined that he gained no ſettlement. *Str.* 1022. Same ſervice within 12 days.

(6) *E.* 7 *G. K.* and *Iſlip.* A perſon is hired for a year; and in the year's ſervice his maſter gives him leave to go and ſee his mother for one day, and he tarried three days, and then came home again, and his maſter took him into his ſervice as before. It was objected, that his ſtaying to ſee his mother without leave, was a deſertion of the ſervice, and the time he ſtaid away takes ſo much off from a compleat ſervice for a year. But by the court; This will not prevent the ſettlement; for the maſter's taking him again is a purgation of the offence, and no interruption of his ſervice. *Caſ. of S.* 129. *Str.* 423. Same ſervice within a few days.

In the ſame caſe it was ſtated, that the ſervant for ſix days was ſick, and incapable of any ſervice: And it was objected, that therefore he could not gain a ſettlement, which is to be acquired only by a ſervice for a year, but here he did not ſerve for ſix days, and ſo there wants ſo much of a ſervice for a year. But by the court; A ſervant that lies thus under the viſitation of god, which befalls him not through his own default, is and muſt be taken to be all the while in the ſervice of his maſter; and if this exception was to be allowed, it might prevent all the ſettlements in the kingdom. *Str.* 423.

Another circumſtance in the ſame caſe, was this: The ſervant, three or four days before his ſervice expired, deſired leave of his maſter to go to a fair, to hire himſelf into another ſervice. His maſter refuſed, and told him, if he went, he ſhould not come into his houſe again. The ſervant went notwithſtanding; and did not return, until the time of his ſervice was expired. By the court; This is nevertheleſs a ſettlement: The requeſt of the ſervant is a reaſonable requeſt, and the law will not ſuffer a maſter to ſhew himſelf ſo inhuman to his ſervant: A maſter cannot turn off his ſervant two or three days before the year expires; if he does, the ſervice in point of law continues,

and he gains a ſettlement notwithſtanding. *Caſ. of S.* 129. *Str.* 423.

H. 4 *G.* 2. *K.* and *Preſton.* A perſon ſerved under a hiring, his whole year within five days, and then left his maſter by conſent, the pariſh officers where he lived having firſt given him 20 *s.* to leave the pariſh. The juſtices held this ſervice to be no ſettlement, and ſtated the caſe ſpecially. It was objected, that this departure was fraudulent. But by the court; The juſtices might upon evidence have examined into that point; and if they had thought that his departure was fraudulent, they would without queſtion have ſtated it to have been ſo; but that not being done, we cannot intend any fraud, nor that the party has gained any ſettlement, it being agreed on all ſides, that he has not ſerved his year. *Nelſ. Poor.*

T. 8 *G. Eaſtland* and *Weſthorſeley.* The fact was ſtated ſpecially on an order of ſeſſions, that a ſervant was hired for a year, and the day before the year expired the maſter told him, that to prevent his gaining a ſettlement in that pariſh, he ſhould go away immediately, which the ſervant refuſed to do, inſiſting to ſerve out the year, whereupon the maſter turned him out of doors. And the court held this to be ſuch a fraud in the maſter, as ſhould not prevent the ſettlement of the ſervant. *Str.* 526.

Same ſervice continued beyond the year.

(7) *M.* 19 *G.* 2. *Croſcombe* and *St. Cuthbert's.* A ſervant was hired for and ſerved a year in *Croſcombe.* He continued to ſerve on there without any new agreement for a quarter of a year, when the maſter removed into a houſe in *St. Cuthbert's*, where the ſervant continued with him for half a year longer. The queſtion was, Whether this was a ſettlement in *St. Cuthbert's* within the reaſon of thoſe caſes that have held the ſettlement to be gained where the laſt 40 days ſervice was? And the court held it a ſettlement there, for it is ſtill a continuing in the ſame ſervice within the meaning of the 8 & 9 *W. c.* 30. though there is no new agreement. And upon the whole there has been between this maſter and ſervant a hiring and ſervice for above a year. *Str.* 1240.

Whether a certificate perſon can gain a ſettlement by ſervice.

Unleſs he ſhall take a tenement of 10 *l. a year, or execute an annual office*] *E.* 15 *G.* 2. *K.* and *Sherborne.* A certificate man has a ſon born in the pariſh to which he was certified, who when 16 years old hires himſelf as a ſervant to a button maker in the ſame pariſh, and ſerves a year. And upon conſidering the words of the ſtatute, which declare, That no perſon who comes in by certificate ſhall be adjudged to gain a ſettlement by any act whatſoever, except he takes 10 *l.* a year, or executes an annual office,—the

court held, that the ſon of the certificate man was equally within it; and that therefore the hiring and ſervice in this caſe gave him no ſettlement. *Str.* 1165.

The ſame ruled ſo again, *H.* 19 *G.* 2. *K.* and *Bray. Str.* 1165.

vii. Of ſettlement by marriage.

What ſhall be deemed a ſufficient marriage ſo as to gain a ſettlement.

1. Heretofore it hath been ſomewhat doubtful, what ſhall be deemed a ſufficient marriage, ſo as that a woman ſhall gain a ſettlement thereby; and the courts have been favourable in admitting marriages, altho' not ſtrictly ſolemnized according to the laws of the church; but now by the ſtatute of the 26 *G.* 2. *c.* 33. a great diſtinction is made, between marriages ſolemnized before the 25th day of *March* 1754, and after that time: for by the ſaid ſtatute it is enacted, that after *March* 25, 1754, all marriages (except in *Scotland*, and except the marriages of jews and quakers, where both the parties are jews or quakers reſpectively) which ſhall be ſolemnized without licence or publication of banns, or in any other place than a church or publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*), or without the conſent of parents or guardians, (where either of the parties, not being a widower or widow, is under the age of 21) ſhall be null and void to all intents and purpoſes whatſoever. And theſe requiſites muſt appear, from the entry thereof in the regiſter book for that purpoſe.

Wife ſhall follow the huſband's ſettlement.

2. It ſeemeth to be a good general rule, that a woman marrying a huſband who hath a known ſettlement, ſhall follow the huſband's ſettlement. And altho' in the caſe of *Uppoterce* and *Dunſwell*, *M.* 1 *G.* it was held, that the wife ſhall not gain a ſettlement with the huſband, until ſhe hath lived with him 40 days unremovable as part of his family; yet afterwards, in the caſe of *K.* and *Pinceborton*, *M.* 3 *G.* it was agreed by the court, that a wife is to be ſent to her huſband's ſettlement, tho' ſhe never lived with him there. And in the caſe of *St. Giles*'s and *Everſley Blackwater*, *H.* 10 *G.* the widow was removed to the deceaſed huſband's ſettlement, tho' ſhe had never been there; and it was ruled by all the court, that the removal was good, and that ſhe muſt be ſent to the laſt legal ſettlement of her huſband, having acquired no other ſettlement ſince his death. *Caſ. of S.* 89. *Seſſ. C. V.* 1. 80, 105. *V.* 2. 112.

Wife can gain no ſettlement without her huſband.

3. It ſeemeth alſo to be agreed, that a wife can gain no ſettlement, ſeparate and diſtinct from her huſband, during the coverture.

Caſe where the huſband hath no ſettlement.

4. It ſeemeth alſo to be agreed, that a woman marrying a huſband that hath no known ſettlement, doth not loſe her former ſettlement which ſhe had before marriage. But the great point of difference hath been, whether ſuch ſettlement continues to her during the coverture, or it is ſuſpended during the coverture, and only revives after the huſband's death. Which point includes in it this queſtion, Whether the pariſh where the woman was laſt legally ſettled before marriage, ſhall by barely proving ſuch marriage, avoid the ſettlement with them during the huſband's life; or whether in order to avoid ſuch ſettlement it is not alſo neceſſary for them to prove, that ſuch woman hath gained another ſettlement, that is to ſay, that the huſband hath a ſettlement, and where.

In relation to which caſe, where the huſband hath no known ſettlement, it hath been adjudged as follows:

E. 2 *G. St. Giles*'s and *St. Margaret*'s. A woman marries a foreigner; and her huſband dies. By the court; She muſt be ſent to the place of her ſettlement before marriage. *Seſſ. C. V.* 1. 97.

H. 12 *G. Weſtham* and *Chiddingſtone.* It was ſtated, that a ſingle woman, ſettled at *Chiddingſtone*, was married to a man who is ſince dead, but his ſettlement did not appear: And by the court, Her ſettlement before marriage ſtands. *Str.* 683.

M. 1 *G. Uppoterce* and *Dunſwell.* A woman is ſettled in *Dunſwell*; and afterwards marries a vagrant, whoſe ſettlement doth not appear. But he goes and lives in *Uppoterce*, and dies there. Two juſtices remove the widow to *Dunſwell*, where ſhe was ſettled before marriage. And by the court; Where it appears that the huſband in his life time had no legal ſettlement as can be found, there the marriage ſhall not put her in a worſe condition than ſhe was before, and is all one as the caſe of a *Scotchman* and a foreigner, and ſhe ſhall not loſe her former ſettlement. *Caſ. of S.* 89. *Seſſ. C. V.* 1. 80.

Hitherto the caſes ſeem to be agreed, being that the huſband is dead. But the difficulty is, where the huſband is ſuppoſed to be living. And in relation to this point, the following ſtrong caſes have been adjudged.

M. 12 *An. Dunsford* and *Wilborough Green.* A woman who was ſettled at *Wilborough*, marries *Archibald Player*, a *Scotchman*, who had gained no ſettlement in *England.* Two juſtices remove her from *Dunsford* to *Wilborough*, the place of her ſettlement before marriage. Exception; this is a married woman, and by her marriage ſhe ought to be ſettled where her huſband was, and this cannot be right;

for

for if the juſtices may ſend away a wife, it is making a divorce between huſband and wife; and if he is a *Scotchman*, they ought to ſend her, as part of his family, to the bordering counties of *Scotland*, according to the act of the 39 *El. c.* 4. *ſ.* 6. The court held, tho' ſhe was a married woman, yet if her huſband had no ſettlement, ſhe could not gain any other ſettlement than ſhe had before marriage; and as for divorce, it was none; for the huſband might come to her as well as *Wilborough Green* as at *Dunsford*. *Foley* 249. *Caſ. of S.* 31.

Note; the act of the 39 *El.* only ſays, that the *Scotchman* himſelf, if a vagrant, may be ſo ſent; but ſays nothing of his family.

M. 3 *G. St. Giles*'s and *St. Margaret*'s. *Sarah Etherington* was ſettled at *St. Giles*'s; and marries an *Iriſhman*. By the court; The marriage will not put her in a worſe condition than ſhe was before; and they held that ſhe continued her ſettlement, notwithſtanding her marriage. *Caſ. of S.* 98.

H. 12 *G. K.* and *Weſterham*. The order ſpecially ſtated by the ſeſſions, was this: It appeared to the court, by the teſtimony of *Elizabeth Pinchen*, that the ſaid *Elizabeth Pinchen* was, at the time the ſaid order was made, a married woman, and that her huſband was one *Thomas Pinchen*, who was born in *Wiltſhire*, but in what place or pariſh he had a ſettlement, he never informed her, nor doth ſhe know; but that he is run away, and ſtill living, for what ſhe knows. By the court; She ought to be ſettled where her ſettlement was before marriage. *Foley* 252. *Seſſ. C. V.* 2. 110.

On the contrary, *H.* 12 *G.* 2. *Stretford* and *Norton*, the caſe was thus: An *Engliſh* woman married an *Iriſh* man who had no ſettlement in *England*. He ran away; two juſtices remove the wife to the place of her ſettlement before marriage. And it was urged, that there could be no pretence that this ſeparated her from her huſband; and if ſhe cannot be ſent thither, ſhe can be ſent no where. But by *Lee* Ch. J. It is now a ſettled point, that by the marriage the woman's ſettlement is ſuſpended, whether the huſband has or has not a ſettlement; for otherwiſe the juſtices might ſeparate huſband and wife; and therefore to make the order good, it ſhould have appeared that the man was dead.—And the order was quaſhed by the whole court. And there were cited theſe two following caſes; *viz. T.* 1 *G. Fanwick* and *Marſon*. It was there declared by the Ch. J. that the ſettlement of a woman, who married a vagrant, is ſuſpended during the coverture; and that as the huſband

cannot be ſent to the place of the wife's ſettlement, ſo neither can the wife her ſelf, becauſe a huſband and wife, being as it were but one perſon, cannot be parted. *T.* 9 *G. Shadwell* and *St. John's Wapping*. One *Ridley*, a vagrant, having no ſettlement, married a woman who had a ſettlement in *St. John's Wapping*, and had four children by her born in *Stepney*. And it was held, that the children were not ſettled in the place where they were born, but where the wife had a ſettlement; but that this was ſuſpended during the coverture, and it revived again upon the death of the huſband. *Andr.* 307. *Seſſ. C. V.* 2. 185.

Finally, in the caſe of *St. John's Wapping* and *St. Botolph's Biſhopgate*, *H.* 28 *G.* 2. it is ſaid to have been adjudged as follows: *Margaret Kinley* having gained a ſettlement in *St. Botolph*'s pariſh by hiring and ſervice, afterwards married *Thomas Kinley* an *Iriſhman*, who had no ſettlement in *England*. About two years ago, the huſband entred on board a man of war bound for the *Weſt Indies*, but *Margaret* heard he was living about two months ago; and the queſtion was, Whether her ſettlement which ſhe had before marriage ceaſed, or was in ſuſpence, during the coverture, and ſhe ſhould be looked upon as a caſual poor; or ſhe ſhould be ſent to the place of her ſettlement before marriage. After full conſideration, *Ryder* Ch. J. delivered the opinion of the court: 1. It is certain *St. Botolph*'s was once her ſettlement, and that is not diſputed. 2. That ſettlement continues till ſhe gains a new one. 3. That ſhe has never yet gained a new one. To the ſecond point he ſaid, a ſettlement is a permanent thing; it laſts during life, or till a new one is acquired: and there is no caſe to be found, where it has been determined or ceaſed ſooner. Neither can any perſon diſcharge his own ſettlement ſooner, or by any other means. The queſtion is not, whether ſhe gained any new ſettlement by marriage, but whether her old ſettlement was diſcontinued by her marriage with a perſon that had none. It is abſurd to ſay, ſhe ſhall loſe her own, without getting another. The objection that the huſband and wife would be ſeparated, is of no weight here; for they are ſeparated already. I muſt own the caſe of *Stretford* and *Norton* is not to be diſtinguiſhed from the preſent, and is againſt our preſent opinion. To be ſure we muſt have great regard to former reſolutions in this court; but we muſt judge upon the caſes before us. How that caſe came to be determined ſo, I do not know, but there are at leaſt four authorities the other way (which perhaps might not then be cited,) and we think the reaſon is with the old caſes. The huſband may come to her in one

pariſh as well as the other, for he will be a vagrant in both, and liable to be treated as ſuch. The wife's ſettlement is only ſuſpended during her huſband's continuance with her; and when he leaves her, it revives.

Whether the wife may be removed from the huſband.

5. *H.* 9 *G. St. Michael's* and *Nunny.* Order of removal, reciting that the wife of a poor perſon who is now living, had intruded, and was likely to become chargeable, and that the place of her ſettlement was in the pariſh of *St. Michael*, ſhe is therefore removed thither. It was moved to quaſh the order, becauſe it did not appear, the huſband was at the time of the removal, in the pariſh of *St. Michael*, ſo that it may be they ſent the wife away from the huſband. But by the court, We cannot intend he was not; if he was in the pariſh from which ſhe was ſent, that indeed would vitiate the order; but as neither of theſe facts appear againſt the order, to ſatisfy us that it is bad, we are not to preſume it to be ſo; and therefore it muſt be confirmed. *Str.* 544.

Marriage fraudulently procured.

6. Although it is generally true, that no ſettlement ſhall be good, which is brought about by fraud or practice; yet it ſeemeth that the rule faileth in this caſe, and that if the marriage take effect, the ſettlement is good; for the two following caſes do proceed upon ſuch ſuppoſition.

M. 11 *G.* The overſeers were indicted for a conſpiracy, in giving a ſmall ſum of money to a poor man of another pariſh, for marrying a poor lame woman of their own pariſh, and ſo by this contrivance conſpiring to ſettle the woman in the other pariſh, where her huſband was ſettled: By the court; If there is a conſpiracy, to let lands of 10*l.* a year to a poor man in order to gain him a ſettlement, or to make a certificate man a pariſh officer, or to ſend a woman big of a baſtard child into another pariſh to be delivered there, and ſo to charge the pariſh with the child, theſe are certainly crimes indictable. But this indictment was quaſhed, for want of averment, that the woman was laſt legally ſettled in the pariſh relieved by her marriage. *Nelſ. Conſpir. Seſſ. C. V.* 1. 265.

H. 6 *G.* 2. *K.* and *Parkins.* A ſingle woman of *Studley*, big with child of a baſtard, was ſent back to *Studley*. *Parkins* overſeer of *Studley*, threatned with all the ſeverity of the law, to force her to marry a ſtranger of another pariſh, againſt both his and her conſent, he giving five guineas to the huſband, and keeping him in liquor. By the court; Shew cauſe why information ſhould not go. *Seſſ. C. V.* 1. 176.

7. What

Settlement of the husband with the wife.

7. What hath been discourſed under this head, hath been concerning the ſettlement of the wife with the huſband: There is another caſe, concerning the huſband's ſettlement with the wife; which is, when a *Scotchman* or *Iriſhman*, or the ſubject of a foreign realm, ſhall marry an *Engliſh* woman having an eſtate, and ſhall reſide with her upon the ſame 40 days unremovable. The queſtion how far this ſhall gain him a ſettlement, depends upon what hath been ſaid before, concerning the ſettlement of foreigners, in the beginning of this treatiſe concerning ſettlements.

viii. Of ſettlement by continuing 40 days after notice.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any perſon ſhall come to ſettle in any tenement under* 10 l. *a year, two juſtices may remove him to the place where he was laſt legally ſettled for* 40 *days.*

But by the 1 *J.* 2. *c.* 17. *The* 40 *days continuance of ſuch perſon in a pariſh, intended by the ſaid act to make a ſettlement, ſhall be accounted from the time of his delivering notice in writing, of the houſe of his abode, and the number of his family, if he have any, to one of the churchwardens or overſeers of the pariſh to which he ſhall remove.* ſ. 3.

And by the 3 *W.* *c.* 11. *The ſaid* 40 *days continuance of ſuch perſon in a pariſh or town, intended by the ſaid acts to make a ſettlement, ſhall be accounted from the publication of a notice in writing, which he ſhall deliver, of the houſe of his abode, and the number of his family, if he have any, to a churchwarden or overſeer. Which ſaid notice in writing, the ſaid churchwarden or overſeer ſhall read or cauſe to be read publickly, immediately after divine ſervice, in the church or chapel, on the next lord's day, when there ſhall be divine ſervice in the ſame. And the ſaid churchwarden, or overſeer, ſhall regiſter or cauſe to be regiſtred, the ſaid notice in writing, in the book kept for the poor's accounts.* ſ. 3.

And *if any churchwarden or overſeer ſhall refuſe or neglect to read or cauſe to be read ſuch notice in writing as aforeſaid, he ſhall (on proof thereof by the oath of two witneſſes before one juſtice) forfeit for every offence* 40 s. *to the party grieved, by diſtreſs, by warrant directed to the conſtable of the pariſh or town where the offender dwells; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit him to the common gaol for one month. And if any churchwarden or overſeer ſhall refuſe or neglect to regiſter, or cauſe to be regiſtred, ſuch notice in writing; he ſhall, on the like conviction, forfeit* 40 s. *to the uſe of the poor of the pariſh or town where the offender dwells, to be levied as aforeſaid; and for want of ſufficient*

diſtreſs, then the ſaid juſtice ſhall commit him as aforeſaid, for the time aforeſaid. ſ. 5.

After any perſon ſhall come to ſettle] But no ſoldier, ſeaman, ſhipwright, or other artificer, or workman in his majeſty's ſervice, ſhall have any ſettlement in any pariſh, port town, or other town, by delivering and publication of notice in writing, unleſs the ſame be after a diſmiſſion out of the ſervice. *ſ.* 4.

In any tenement under 10 l. *a year*] But this hath been always underſtood of perſons coming to ſettle upon ſuch tenement, as farmers thereof, and not where the ſame is their own proper eſtate; and therefore a man's coming to ſettle upon his own eſtate is not within the act.

Where he was laſt legally ſettled for 40 *days*] *H.* 10 *G.* Caſe of *Cirenceſter.* It was held, that living 40 days ſucceſſively was not neceſſary; and Mr. J. *Forteſcue* ſaid, that living 40 days off and on, is making the caſe ſtronger than living 40 days together in a pariſh. *Seſſ. C. V.* 2. 40. *Str.* 579.

And, *H.* 12 *G.* 2. *Souton* and *Sidbury.* It was admitted by the counſel, and held by the court as a point indiſputable, that it is not neceſſary upon this ſtatute, that the inhabitancy ſhall be for forty days ſucceſſively. *Andr.* 345.

Notice in writing] But perſons executing a publick annual office, or paying pariſh rates, or being ſervants for a year, or apprentices by indenture, ſhall thereby be ſettled without notice in writing. 3 *W. c.* 11. *ſ.* 6, 7, 8.

And in general, all perſons not removable may become ſettled without giving notice, for the notice is only intended where the perſon is removable; for if he is not removable, the notice is to no purpoſe: for continuing 40 days unremovable without notice, and continuing 40 days removable but not removed after notice publiſhed, do equally gain a ſettlement.

In writing] *H.* 3 *G.* 2. *Aldenham* and *Abbots Langley.* Upon a ſpecial order of ſeſſions, it was ſtated, that a poor perſon forty years ago came into a pariſh, and lived there ever ſince; that he attended the leet, amended the highways, had a pew in the church, five children, and did watch and ward. But by the court, Thoſe are not annual offices in the pariſh, and the 1 *J.* 2. *c.* 17. was purpoſely made to avoid theſe conſtructive notices, and require notice

tice in writing; and therefore they held it no ſettlement. *Str.* 853.

H. 8 *W. Talbury* and *Foſton.* A perſon exerciſed the trade of a blackſmith; was publickly employed by the pariſhioners, by the bailiff of the lord of the manor, the vicar, and the juſtice. The queſtion was, Whether this publick way of living was not tantamount to notice in writing, which was only deſigned to prevent clandeſtine entries and living. By the court; This might perhaps have ſatisfied the ſtatute of the 1 *J.* 2. but the 3 *W.* hath particularized the notice, and what ſhall be tantamount to it, and what not; but this is not among the particulars of the ſtatute, and therefore is not ſuch notice as the law requires. 2 *Salk.* 476. *Foley* 114.

Publication of the notice] In the caſe of *K.* and *Chertſey*, The banns of matrimony of a poor perſon were publiſhed in the church; and it was inſiſted, that this was a notice ſufficient, being in writing, and publiſhed in the church: But by the court; This is not ſufficient; for the other requiſites by the 3 *W.* muſt be obſerved; and that being an explanatory act, cannot be taken by equity. 5 *Mod.* 414.

After all, this kind of ſettlement, by continuing 40 days after publication of notice in writing, is very ſeldom obtained; and the deſign of the acts is not ſo much for the gaining of ſettlements, as for the avoiding of them, by perſons coming into a pariſh clandeſtinely: for the giving of notice is only putting a force upon the pariſh to remove. But if a perſon's ſituation is ſuch, that it is doubtful whether he is actually removable or not, he ſhall by giving of notice compel the pariſh either to allow him a ſettlement unconteſted, by ſuffering him to continue 40 days; or, by removing him to try the right.

ix. Of ſettlement by paying pariſh rates.

By the 13 & 14 *C.* 2. *c.* 12. *Forty days inhabitancy ſhall gain a ſettlement*; By the 1 *J.* 2. *c.* 17. *Such* 40 *days are to be reckoned from the delivering of notice in writing*; And by the 3 *W. c.* 11. *from the publication of ſuch notice in the church.*

But if any perſon who ſhall come to inhabit in any town or pariſh, ſhall be charged with, and pay his ſhare, towards the publick taxes or levies of the ſaid town or pariſh, he ſhall be adjudged to have a legal ſettlement in the ſame, tho' no ſuch notice in writing be delivered and publiſhed. 3 W. c. 11. ſ. 6.

But

But by the 9 & 10 *W. c.* 11. *Perſons reſiding under a certificate ſhall gain no ſettlement by being rated to and paying any ſuch levies, taxes, or aſſeſſments.*

If any perſon] *M.* 13 *G. Solontongham* and *Worpleſdon.* The *landlord* was rated to the poor, for the tenement as being in his hands, and the *tenant* paid the rate. By the court; The tenant doth not gain a ſettlement, unleſs he be both rated and pay. *Foley* 128. *Seſſ. C. V.* 2. 122.

And this kind of practice may be ſometimes, on purpoſe to avoid a ſettlement. But it lies in the power of the juſtices to adjudge whether or no it ſhall be deemed a fraud.

E. 4 *G.* 2. *Kinfare* and *Kingswinford.* A perſon rented a tenement, and paid all parochial taxes for the ſame in his own right, but was not rated in the pariſh books; but the name of *Richard Cotes* that rented the tenement before, was kept in the levy books. By the court; This was no ſettlement, becauſe he was not aſſeſſed as well as paid. *Foley* 120.

H. 8 *W. St. Mary le more* and *Heavy tree.* The rates were charged, not on the perſon but on the houſe: Adjudged, that this rating and payment made a ſettlement. 2 *Salk.* 478.

Shall be charged with and pay] *M.* 9 *G.* 2. *K.* and *Bovindon.* It was held, that *payment* to the poor doth not give a ſettlement, unleſs the party was *rated*, for the *rating* is the act of the pariſh, and not the other. And the ſettlement ariſeth from the pariſh's giving that evidence of their being ſatisfied of his ability. *Str.* 1023.

M. 7 *W. Talborn* and *Boſton.* If a man is taxed, and after taxation ſtays 40 days, it is no ſettlement unleſs he pay the tax. 2 *Salk.* 523.

The publick taxes or levies of the ſaid town or pariſh] No perſon who ſhall be aſſeſſed to the *ſcavenger*'s rate, or to the repairs of the *highways*, and ſhall duly pay the ſame, ſhall be deemed to be ſettled thereby. 9 *G. c.* 7. *ſ.* 6.

T. 9 *An.* Paying to the *county bridge* gains no ſettlement, for there all the county is liable, and he pays as one of the county, and not as an inhabitant of the pariſh or town where he lives. *Caſes of S.* 1.

H. 9 *G.* 2. *K.* and *Bramley* in the borough of *Leeds* in *Yorkſhire.* Two juſtices make an order to remove *John Cloſe*, from *Armley* another townſhip in the ſame borough, to *Bramley*, who appeal, and the ſeſſions confirm the order, and ſtate ſpecially, that the ſaid *John Cloſe*, after his ſettlement in *Bramley*, removed with his family, and inhabited

and

and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the *land tax* only. By the court; It is a good ſettlement, and the orders were quaſhed. *Seſſ. C. V.* 2. 167.

But by the 21 *G.* 2. *c.* 10. Perſons aſſeſſed to and paying the *duty on houſes and windows*, ſhall not thereby gain a ſettlement.

x. *Of ſettlement by ſerving a pariſh office.*

By the 13 & 14 C. 2. c. 12. *Forty days inhabitancy ſhall gain a ſettlement*; By the 1 J. 2. c. 17. *Such* 40 *days are to be reckoned from the delivering of notice in writing:* And by the 3 W. c. 11. *they are to be reckoned from the publication of ſuch notice in the church.*

But if any perſon who ſhall come to inhabit in any town or pariſh, ſhall for himſelf, and on his own account, execute any publick annual office or charge, in the ſaid town or pariſh, during one whole year; he ſhall be adjudged to have a legal ſettlement in the ſame, tho' no ſuch notice in writing be delivered and publiſhed. 3 W. c. 11. ſ. 6.

By the 9 & 10 W. c. 11. *No perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act whatſoever, to have procured a legal ſettlement in ſuch pariſh, unleſs he ſhall really and* bona fide *take a leaſe of a tenement of the yearly value of* 10*l. or ſhall execute ſome annual office in ſuch pariſh, being legally placed in ſuch office.*

Publick annual office or charge, in the ſaid town or pariſh] *H.* 9 *An. Gatton* and *Milwich.* A perſon being choſen *pariſh clerk* by the parſon, ſerved for ſeveral years, and received his fees and dues. By the court; It is a pariſh office, and has the care and cuſtody of the ornaments of the church. 'Tis true, if he is poor, and has a family, they may remove him; but if they let him continue a year, none can remove him; for altho' he came in by the parſon only, yet the pariſh paying him, it is a conſent and approbation; and by this conſent of theirs, the law adjudges him in by the concurrence of the pariſh. *Caſes of S.* 241. 2 *Salk.* 536. *Foley* 123.

M. 9 *An. St. Mary* and *St. Laurence* in *Reading.* The queſtion was, Whether the being *churchwarden* for a borough, and ſerving that office for a year in the borough, which extends it ſelf into ſeveral pariſhes, is ſuch a ſervice of an annual office as will gain a ſettlement? By the whole court, it was held to be an office, the ſerving of which for one whole year, was ſufficient to gain him a ſettlement in that

that parish within the borough, in which he lived. *Foley* 121.

H. 7 *G.* 2. *Bisham* and *Cook.* The sessions setting out the fact specially, adjudge the settlement of a poor person to be at *Bisham*, because when he lived in that parish, he executed the office of *collector of the duties* given by the 6 & 7 *W. c.* 6. on *births and burials.* It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish: besides, it was not stated in the order, that this was an annual office, as it must be to give a settlement, within the express words of the act. On the other hand was cited the abovesaid case of *St. Mary* and *St. Lawrence* in *Reading.* And by the court, The reason why the executing offices gives a settlement without notice is, because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice: can any thing be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not be a *parish office*, but a *publick annual office in the parish.* And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears on looking into the statute, that the power given to the commissioners is to appoint a person who shall be collector of the duties for a year, and then give in his accounts. It hath been held a settlement in the case of the land tax, and why not in this? And the order was confirmed. *Str.* 411. *Foley* 124.

H. 2 *G. St. Trinity* and *Garsington.* It was held, that a person who was chosen a *tythingman* for a year, and served that year, was such an officer as thereby gained a settlement. *Foley* 123.

H. 9 *G. Burliscomb* and *Samford Peverell.* The sessions on a special order adjudge, that executing the office of *tythingman* would not gain a settlement: But by the court, The order must be quashed, for this is an annual office in the parish, within the words and meaning of the act. *Str.* 544.

Certificate, &c.] *E.* 8 *G.* 2. *St. Maurice* and *St. Mary Calendre* in *Winchester.* Upon a special order of sessions, it was held, that executing the office of *constable* in the city at large, gave a certificate man a settlement in that parish where he inhabited; though he was appointed by the corporation

poration in general, and acted through all the parishes in the city; for he executes an annual office in the parish, which are the words of the statute. *Str.* 1014. *Sess. C. V.* 1. 315.

And, *E.* 8 *G.* 2. *K.* and *St. Mary Berkhamstead*; The court seemed to be of opinion, that the executing the office of a *parish clerk* is sufficient for a certificate person to gain a settlement; for it is an *annual office* and more. *Sess. C. V.* 2. 182.

M. 17 *G.* 2. *Wingham* and *Selling*. It was stated in a special order, that a certificate man, having notice that he was appointed borsholder, never took the oath of office, but once executed a warrant of a justice directed to the borsholder. And this the sessions determined to be gaining a settlement within the 9 & 10 *W. c.* 11. But by the court, The order must be quashed, for the words of the act are, *being legally placed in such office*, that is being the officer both *de facto* and *de jure*, which this man was not, the order stating negatively, that he was not legally placed therein, which can only be by an appointment and swearing in. *Str.* 1199.

E. 18 *G.* 2. *Sheepshead* and *Melborne*, A person was certificated from *Sheepshead* to *Melborne*, and stayed there ten years, during which time the lady *Elizabeth Hastings* conveyed lands to trustees for several charities out of the profits, and amongst others, the sum of 10 *l.* a year to the charity school at *Melborne* to be paid to the vicar there for the time being. In a special order of sessions it was stated, that the certificate man officiated as schoolmaster several years, and received the 10 *l.* a year from the vicar: and this the sessions held, gained him a settlement in *Melborne*, where they declare he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10 *l.* a year, and executing an annual office: But by the court, The order must be quashed: for it doth not appear how he came into this employment, and the legal right to receive the salary is in the vicar, who not caring to officiate himself, has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less to a certificate man. *Str.* 1225.

xi. Of settlement by renting 10 l. *a year.*

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any person shall come to settle in any tenement under* 10 l. *a year,*

a year, two juſtices may remove him to where he was laſt legally ſettled for 40 *days.*

By the 9 & 10 W. c. 11. *No perſon who ſhall come into any pariſh by certificate, ſhall be adjudged by any act whatſoever to have gained a legal ſettlement in ſuch pariſh, unleſs he ſhall really and* bona fide *take a leaſe of a tenement of the yearly value of* 10*l.* *or ſhall execute an annual office in ſuch pariſh.*

Shall come to ſettle] For taking land in the pariſh, of whatever value it ſhall be, without coming to reſide there, will not gain a ſettlement.

In any tenement] Here it occurs to be conſidered, what ſhall be a *tenement* within this act, ſo as to gain a ſettlement. Concerning which it hath been adjudged as follows:

H. 10 *An. Evelin* and *Rentcomb.* An order was drawn up ſpecially to have the opinion of the court, Whether renting of a *water mill* of 10*l.* a year, would make a ſettlement? And by the whole court clearly, a mill is a *tenement*, and the renting thereof muſt gain a ſettlement within the ſtatute. 2 *Salk.* 536. That is, if the party lives therein, or within the pariſh.

T. 10 *G.* 2. *Butley* and *Benhall.* The queſtion was, whether renting a *windmill* at 14*l.* a year, gained a ſettlement; it having been determined that a watermill did. It was ſaid, thoſe are always habitable, but the others often are not. But by the court, It is the ſame as if he had rented land of that value.

H. 12 *G. Stone* and *Kniver.* Upon a ſpecial order of ſeſſions, it was ſtated, that a poor perſon rented a *coney warren* and a cottage upon it at 10*l.* a year, which the juſtices were of opinion did not gain him a ſettlement. But by the court, A *mill* hath been held to be a tenement within the ſtatute, and why not this? It is his ability to pay 10*l.* a year, that is the foundation of the ſettlement, and whether he pays it for a houſe of habitation, or for a warren which brings him in a profit, is not material; the order of ſeſſions muſt be quaſhed. *Str.* 678. *Seſſ. C. V.* 2. 109.

As to the caſe, *Whether it ſhall be one intire tenement*; it hath been adjudged as here followeth:

E. 3 *G.* 2. *Minchin-hampton* and *Biſley.* Order ſpecially ſtated: A poor perſon rented, in the pariſh of *Biſley*, lands of the yearly value of 8*l.* from his father, an houſe of the yearly rent of 1*l.* 10*s.* from his uncle, and the ſame year *took the paſture eatage* of a piece of ground, in the ſaid pariſh from *Michaelmas* to *Chriſtmas*, and paid 12*s.* for the ſame, which piece of ground was worth 6*l.* a year. It was

urged, that this was a good ſettlement, becauſe during thoſe three months the man was not removable. But in this caſe, the court held, that *taking the paſture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be eſteemed part of a *tenement* within the meaning of the ſtatute; but ſeemed to think, that if the words had been, that he had *taken a paſture ground* for 3 months, that would have made a good ſettlement. *Seſſ. C. V.* 2. 132. *Str.* 874.

So that it ſeemeth that this was only an error in the ſtate of the caſe by the ſeſſions, in ſaying that he rented the *herbage*, inſtead of ſaying that he rented the *land*; and that if this laſt *item* could have been deemed any part of a tenement, the whole 3 parcels together, being within the ſame pariſh, would have made up one ſufficient tenement whereby to have gained a ſettlement: that is, ſuppoſing the renting the ſame for three months would have ſatisfied the ſtatute, on which point judgment was not given, the order (which made the ſame no ſettlement) being confirmed by the court, for the reaſon abovementioned.

But that two tenements in the ſame pariſh, rented by the ſame perſon, are ſufficient within this ſtatute to gain a ſettlement, will further appear from the following report: *M.* 1 *G. North-Nibley* and *Wotton under Edge*. A perſon rented an alehouſe at 5 *l.* a year, at *Lady-day*, for a year; and in *May* following rented a piece of land for 6 *l.* a year; held the ſame for two months; and ran away. It was held, that it was not neceſſary the meſſuage or tenement ſhould be rented of one perſon; tho' it be rented of ſeveral, yet in him it is but one, and the ſtatute is ſatisfied, he being of ability to be truſted with a tenement of 10 *l.* a year. Beſides, the running away did not alter the caſe; he being ſtill liable to pay the rent; the contract continued: and living there but 40 days, the contract being for a year, it is good. The ſtatute ſays, renting a tenement of 10 *l.* a year, but doth not ſay for what time; as to that it is ſilent: By *Parker* Ch. J. If he had taken it for a month, it had not been a ſettlement; for there, altho' he pay a rent proportionable to the year, yet he is not thought of ability, or ſufficient to be truſted with it for a whole year. *Caſes of S.* 86. *Seſſ. C. V.* 1. 73. *Foley* 79.

Furthermore; It is to be conſidered, How far *the ſame tenement, but lying in different pariſhes*, ſhall gain a ſettlement: As to which it hath been adjudged as follows;

T. 3 *G. South Sidenham* and *Lamerton*. A perſon rented a tenement of 10 *l.* a year, being one intire tenement, but lying in two pariſhes. The queſtion was, Whether this

this gained a ſettlement? By the court; If the tenement be intire, tho' the lands be in different pariſhes, it ſeems to be a ſettlement in that pariſh where the houſe is; otherwiſe, where the tenements are diſtinct, and lie in different pariſhes, as if a tenement of 8 *l.* lie in one pariſh, and a tenement of 3 *l.* in another. *Str.* 57. *Seſſ. C. V.* 1. 115. *Foley* 81.

But the queſtion in this caſe only was, Whether one and the ſame tenement, and not whether two diſtinct tenements, of the yearly value of 10 *l.* but lying in different pariſhes, ſhall gain a ſettlement: So that the determination in this caſe, as to this latter point, was extrajudicial. And the reaſon given by the court in this caſe doth extend as well to different tenements, as to one intire tenement, *viz.* The miſchief recited by the ſtatute, and intended to be prevented, is the vagrancy of poor perſons, who uſed to come into pariſhes where there was the beſt ſtock; and the ſtatute deſcribes who are intended by thoſe poor, namely, ſuch perſons who are not capable of hiring a tenement of 10 *l.* a year; now the man's ſufficiency is not the leſs, becauſe 6 *l.* a year, part of the tenement, is in a different pariſh. There are conſiderable farmers who do not rent 10 *l.* a year in any one pariſh, and it would be hard to adjudge that therefore they gain no ſettlement. *Str.* 58. *Foley* 81.

M. 3 *G.* 2. *Elſted* and *Hollingbourn.* The caſe was this: A perſon rented a tenement, conſiſting of a farm houſe and lands of 12 *l.* 10 *s.* a year; which houſe and lands laid contiguous, and had been uſually letten together and occupied by the ſame perſon, but the houſe and ſo much of the land, as together amounted to 9 *l.* a year, lay in one pariſh, and 3 *l.* 10 *s.* in another pariſh. By the court, this was held to be a ſettlement; on the authority of *South Sydenham* and *Lamerton.* *Seſſ. C. V.* 2. 130. *Str.* 849.

Further yet; It remains to be conſidered, how far *two diſtinct tenements, one being in one pariſh, and another being in another pariſh,* ſhall be deemed a ſufficient tenement within the act, whereby to gain a ſettlement: For altho' in the caſe of *South Sydenham* and *Lamerton* aforeſaid, the court ſeemed to be of opinion that two ſuch tenements would not gain a ſettlement; yet that (as hath been obſerved) was not the point in queſtion. And in the caſe of *K.* and *Sandwich, T.* 8 *G.* 2. It was reſolved as follows:

A perſon rented a tenement of 30 *s.* a year in one pariſh, and then took a parcel of land of 12 *l.* a year in another pariſh, and occupied that, and continued in poſſeſſion, and lived upon the former tenement during that time. The

court held, that thereby he gained a ſettlement in the pariſh where he lived. *Seſſ. C. V.* 2. 166.

And the ſame will appear further confirmed, when we come to ſpeak of certificate perſons gaining ſettlements by 10*l.* a year.

Under 10l. *a year*] If the tenement is under 10*l.* a year, the juſtices upon complaint within 40 days, have power to remove the perſon coming there to reſide; if it is not under 10*l.* a year, they have no power to remove him; and continuing unremovable for 40 days, he thereby gains a ſettlement.

Upon which it is obſervable, that payment of the rent can be no matter of conſideration with regard to the ſettlement; for the ſettlement is obtained before the rent becomes due. For the ſettlement is not ſuſpended, as in the caſe of a hired ſervant, until he hath ended his year; but ſo ſoon as he hath reſided 40 days, he is ſettled without more: even as a ſervant hired for a year, became ſettled in 40 days, before the ſtatute of 8 & 9 *W.* and as apprentices are ſtill ſettled in 40 days, without any regard to ſerving out their time.

Ten pounds a year] Upon theſe words the *value* of the tenement is conſiderable, or what ſhall be deemed a tenement of 10*l.* a year ſufficient to gain a ſettlement. Concerning which it hath been adjudged as follows:

H. 13 *G.* 2. *Southwald* and *Yokesford.* A perſon took a houſe, and agreed to pay 10*l.* a year for it; and the landlord agreed to make new buildings. Theſe improvements were never made, and the houſe worth but 6*l.* a year. By the court; The ſeſſions muſt judge upon the facts; they have ſtated that the agreement was for 10*l.* a year; this is evidence of the value; but the juſtices have a right to inquire into the real value, and that is but 6*l.* a year, and there is no fact to ſhew this 10*l.* a year. Therefore adjudged, that this was no ſettlement. *Seſſ. C. V.* 2. 198. *Str.* 1127.

T. 3 *G. South Sydenham* and *Lamerton.* Order ſpecially ſtated: A perſon took a leaſe of a tenement, for 99 years, determinable on 3 lives, and paid his fine, and the rent reſerved was but 7*l.* but the real value was 13*l.* By the court; The quantity of the rent is not material, but the value of the tenement. If there be a leaſe of lands worth 10*l.* a year, and a fine be paid, and 20*s.* only reſerved, it makes a ſettlement; ſo if no fine be paid, or no rent reſerved, yet if the tenement is worth 10*l.* a year, it makes a ſettlement: for the ſettlement depends on the value of the tenement,

tenement, and not on the rent. *Seſſ. C. V.* 1. 115. *Fol.* 81. *Str.* 57.

T. 14 *G.* 2. *Kirton* and *Weſton.* Order ſpecially ſtated: A perſon rented a tenement at 10 *l.* a year, which had been let ſo for 5 years before; but the tenement had been uſually let at 7 *l.* a year, and when the ſaid perſon was told it was too dear, he ſaid he did it to gain a ſettlement; but the ſeſſions did not adjudge it a fraud. Upon this it was urged, The conſideration here muſt be, whether upon the ſtate of this caſe, he rented a tenement under the value of 10 *l.* a year; for if not, it is a good ſettlement; for they ſaid, they would not hold this to be fraudulent, it not being ſo adjudged, and evidence of fraud is not ſufficient; and as to the value, they muſt take it to be according to the rent, unleſs the contrary was ſtated; for as it is a removal of a man from his farm, it ſhould be ſhewn to be under value. *Seſſ. C. V.* 2. 141. *Str.* 1156.

Unleſs he (the certificate perſon) *ſhall really and* bona fide *take a leaſe*] *T.* 9 *G. K.* and *Little Dean.* It was ſtated, that a man took a leaſe for 7 years, and objected that it might be only by parol, and then it is void for the whole, and there can be no ſettlement. But by the court; Then it ſhould have been ſtated to be by parol; we muſt take it to be by deed, otherwiſe it is no leaſe at all. And the order was confirmed. *Str.* 555.

H. 8 *G. Cranly* and *St. Mary Guilford.* Upon a ſpecial order of ſeſſions it was ſtated, that a certificate man agreed with the leſſee of a mill, that he ſhould occupy the mill, and pay 12 *l.* a year; that there was no under leaſe or aſſignment, but in purſuance of that agreement the certificate man occupied the mill two years, and paid the rent. The ſeſſions adjudge it no ſettlement. But by the court; The order muſt be quaſhed: for if this be not an abſolute leaſe for a year (as *Eyre* J. ſaid it was, the rent being reſerved as the rent for a year), yet it is undoubtedly a leaſe at will, which is ſufficient to gain a ſettlement. *Str.* 502.

A leaſe of a tenement] *M.* 9 *G. St. John's Hertford* and *Amwell.* A certificate man took a farm of 10 *l.* a year, part of which was in *St. John*'s, and part in *Amwell*; but the greateſt part, together with the houſe, being ſtated to lie in the pariſh that received his certificate, the court held it a ſettlement there. *Str.* 529. *Caſ. of S.* 148.

H. 8 *G.* 2. *St. Mary Calendre* and *St. Thomas.* It was ſaid, that theſe acts have been liberally expounded, and that

renting 10 *l.* a year in different parishes will avoid a certificate. *Sess. C. V.* 1. 315.

E. 4 *G.* 2. Case of *Stapleford* in *Leicestershire*. A person took 3 *l.* a year in the place he was certificated to, and 40 *l.* a year in the next parish, but lived where the 3 *l.* was; and it was held a settlement there. *Str.* 849.

Upon the whole, notwithstanding what hath been so often mentioned above, as to the supposed *sufficiency* of the tenant to stock the tenement upon which he comes to reside, yet the statute takes no notice of that; and therefore, altho' it may be a good general reason to suppose, that a person of such ability is not likely to become chargeable, yet such ability doth not seem to enter as any necessary ingredient into the settlement; and if the landlord will trust the tenant, it seemeth that the parish hath no remedy, unless the justices shall adjudge it a fraud. And in the case of *giving security* for the rent, it hath been determined as follows:

T. 10 *G.* 2. *Butley* and *Benhall*. A person rented a windmill at 14 *l.* a year; but gave security for the rent: It was objected, that this was no settlement, for that the foundation thereof is the credit of the party, which fails in this case. But by the court: Giving security for the rent doth not alter the case; for he that has credit to give security, has credit to pay rent. *Sess. C. V.* 1. 320. *Andr.* 3.

And it may be observed upon this case, that it requires no great *ability* to stock a windmill.

xii. Of settlement by a person's own estate.

By the 13 & 14 *C.* 2. *c.* 12. *On complaint within* 40 *days after any person shall come to settle in any tenement under* 10 *l. a year, two justices may remove him.*

And by the 9 & 10 *W. c.* 11. *No certificate person shall gain a settlement, but by renting* 10 *l. a year, or executing an annual office.*

Upon which two statutes the following cases are considerable:

1. How far a person, having an estate of his own, tho' under 10 *l.* a year, shall gain a settlement thereby, within the said statute of the 13 & 14 *C.* 2.

Person not removable from his own.

(1) *E.* 11 *An. Harrow* and *Edgware*. A person settled at *Harrow*, went into the parish of *Edgware*, and purchased a copyhold estate for life, and lived therein 4 or 5 years, and died. And as this was a tenement under 10 *l.* a year, the question was, upon the 13 & 14 *C.* 2. whether this gained him a settlement at *Edgware*? It was argued,

gued, that the ſtatute hath been always held to mean an eſtate which a man takes to farm, and not an eſtate of his own; for if a perſon has a freehold, he cannot be removed from it, tho' not worth 10*l.* a year. And by *Parker* Ch. J. and the court; Where a perſon has an eſtate for life, or an eſtate of inheritance of his own, that gains him a ſettlement, tho' leſs than 10*l.* a year; for he cannot be removed, and if he cannot be removed, he certainly gains a ſettlement. *Foley* 257.

E. 13 *G.* 2. *Harsfield* and *Furley.* On a ſpecial order of ſeſſions, relating to the ſettlement of a boy of 8 years and a girl of 6, it was ſtated, that the mother of theſe children had an eſtate of 4*l.* a year in *Furley*, where ſhe and her huſband lived and had theſe children: that ſhe dying, the huſband became tenant by the curteſy; and whilſt ſuch, he took 30*l.* a year in *Harsfield*, and lived one year there with his two children, and then died: that the children being found with their grandmother at *Furley*, were both removed to *Harsfield:* which order the ſeſſions confirmed. And now the court, upon argument, confirmed the orders as to the girl, but quaſhed them as to the boy. For as to the boy, he was tenant in fee of the 4*l.* a year. And though it was not ſtated, that he was actually upon that ſpot; yet it was enough, that he had ſuch an eſtate in the pariſh, from which he could not be removed. But as to the daughter it is otherwiſe; ſhe could demand no maintenance out of her brother's eſtate: and it was never yet determined, that children ſhould go to a grandmother for nurture. She may indeed be charged to contribute to their relief in the pariſh where they are ſettled. *Str.* 1131.

T. 7 *G.* 2. *K.* and *Sandridge. Thomas Perchin* by indenture demiſed to *Thomas Gates* the father, a cottage at 5*s.* a year, which was the full value, for 99 years. The leſſee held it till his death, and deviſed it to *Thomas Gates* his ſon. And the queſtion was, whether the ſon, as executor, being intitled to the term, ſhall gain a ſettlement by inhabiting in ſuch cottage? By the court; Where a man lives upon his own, is a caſe of a very tender nature, and the law will not unſettle him: Perſons to be removed under the ſtatute of *C.* 2. are thoſe that wander from place to place, and not thoſe who live upon their own eſtate: And adjudged, that he gained a ſettlement. *Seſſ. C. V.* 1. 200. *Str.* 983.

E. 3 *G. South Sydenham* and *Lamerton.* A perſon poſſeſſed of a leaſe for years dies inteſtate; if the next of kin ſhall be ſaid in law to be ſettled there, was the queſtion: It was held not; he has only a right, which he muſt purſue

ſue by taking out letters of adminiſtration, and no right is veſted in him till that is done. *Caſ. of S.* 103.

T. 10 *G.* 2. *Faringdon* and *Widworthy*. The pauper ſettled at *Faringdon*, removed to *Widworthy*, and lived there with his father in a cottage houſe of 30*s.* a year, working as a day labourer. The father died inteſtate, poſſeſſed of the ſaid cottage for the reſidue of a term, determinable on lives, leaving the pauper and another ſon. The pauper's brother took his diſtributive ſhare of his father's eſtate in goods, and the pauper himſelf, after the father's death, continued in the cottage for 5 or 6 years, until the leaſe was determined: After which, and ſince the making out the order for his removal, he took out adminiſtration to his father. And the ſeſſions quaſhed the ſaid order, adjudging him to be ſettled at *Widworthy*. But by the court, He had gained no ſettlement at *Widworthy* at the time of making the original order, becauſe he then was plainly removable, as he had not taken out the adminiſtration. And quaſhed the order of ſeſſions. *Andr.* 4.

M. 4 *G. Murſley* and *Granborough*. Sir *John Forteſcue* demiſed a cottage of 30*s.* a year, to one *Eden* for 99 years, reſerving 12*d.* rent: *Eden* aſſigns the term to one *Gadden* in truſt for his wife for life, and then in truſt for his ſon, during the remainder of the term: The ſon dies, and leaves a wife, who as adminiſtratrix to her huſband became intitled to this term, and ſhe grants this cottage for 24 years, excepting two rooms, in which two rooms ſhe lives, and marries one *John Chappel*. The queſtion was, whether *Chappel*, as huſband of an adminiſtratrix, who was intitled to the truſt of a term only, and being intitled to a chattel in another's right only, was removable by the 13 & 14 *C.* 2. And by the court, he is not: this is not a taking of a tenement under 10*l.* a year, for the 12*d.* is not reſerved as a rent, but only an acknowledgment uſually paid on long leaſes. The caſe of a copyhold is ſtronger than this, for that is but an eſtate at will. To ſtrip the man of his own, is the way to make him chargeable, for he may not be able to let it. Therefore the orders which adjudged this to be no ſettlement were quaſhed. *Str.* 97. *Seſſ. C. V.* 1. 122.

M. 11 *G. Aſhbrittle* and *Wyley*. A poor man built a cottage, upon the waſte belonging to my lord *Pembroke*, without his licence, who never offered to diſturb the man in his poſſeſſion, and he lived in this cottage for 30 years, and by his will left 3 guineas in the hands of his executors to purchaſe this cottage of my lord *Pembroke*. Upon his death, *Elizabeth* his only child, and heir at law, entred into the cottage, and after married one *Barrow*, and they lived

ved in the cottage, and were in quiet poſſeſſion for three quarters of a year, and then ſold it. The queſtion was, whether the daughter, and her huſband *Barrow*, had gained a ſettlement by virtue of this inhabitancy, in the pariſh of *Wyley*, in which their cottage was. Mr. *Reeve* argued, that this inhabitancy gained no ſettlement: The cottager was a diſſeiſor, and had no right to build upon the waſte, and was at any time removable by the lord of the waſte, and if he might have been removed within 40 days, his long poſſeſſion ſhall give him no title; for he muſt only be conſidered as a tenant at will, and conſequently his continuance upon the cottage, tho' never ſo long, could give him no ſettlement: and if the cottager had no right of ſettlement, none claiming under him ſhall be in a better condition. The ſtatute of the 31 *El.* prohibits the building of cottages, therefore the erection of one is unlawful, and ſhall have no privilege or encouragement. I admit if one inhabits by virtue of a leaſe, or other good title, for 40 days, he gains a ſettlement. But the inhabitancy in this caſe was without any good title, and conſequently can gain no right of ſettlement. Theſe objections were anſwered by the court, who held it clearly to be a good ſettlement. And tho' it was further objected, that the cottager himſelf was ſenſible he had no right, by his deviſing money for the purchaſe of a term under the lord of the waſte, yet it was over-ruled. And by all the court it was held, that when a man hath ſuch a poſſeſſion as he cannot be removed from, and hath enjoyed that poſſeſſion forty days, he thereby gains a ſettlement; and that is the reaſon why a copyholder or leſſee for years gains a ſettlement by an inhabitancy for 40 days; for in thoſe caſes, the juſtices of the peace cannot determine his right: this preſent caſe is very ſtrong; for the 30 years poſſeſſion of the cottager, without interruption, would have been a good title in an ejectment; and for that reaſon the juſtices of the peace cannot determine his title. It appears upon the face of the order, that the cottager had a good title in ejectment, and in any caſe but in a real action. Lord Ch. J. *Raymond* ſaid, he had known recoveries upon a 20 years quiet poſſeſſion, and 20 years poſſeſſion is a title to a plaintiff in ejectment as well as to a defendant. After ſo long a poſſeſſion as this, it ſhall be preſumed that the cottager had a licence to erect the cottage; but this caſe goes further, for beſides the 30 years quiet poſſeſſion of the cottage, here is a deſcent caſt upon the daughter who was heir to the cottager, and *prima facie* it is an inheritance in the daughter, and an eſtate by diſſeiſin is in law a good eſtate, and a fee ſimple, till it be defeated.

ſeated. Wherefore all the court held, that the juſtices had no juriſdiction in this caſe; for they could not examine into the title to the land. And the ſettlement in the pariſh of *Wyley* was adjudged to be good. *Seſſ. C. V.* 2. 115. *Str.* 608.

Purchaſe under 30*l.*

(2) But there is one exception to all that hath been ſaid concerning a perſon's being ſettled by living upon his own eſtate; and that is, in the caſe of a purchaſe under the value of 30*l.* which is made by act of parliament, 9 *G. c.* 7. and is thus:

After *Mar.* 25. 1723, *No perſon ſhall be deemed to acquire any ſettlement in any pariſh or place, by virtue of any purchaſe of any eſtate or intereſt in ſuch pariſh or place, whereof the conſideration for ſuch purchaſe doth not amount to the ſum of* 30*l.* bona fide *paid, for any longer or further time, than ſuch perſon ſhall inhabit in ſuch eſtate, and ſhall then be liable to be removed to ſuch pariſh or place, where he was laſt legally ſettled before the ſaid purchaſe and inhabitancy therein.*

By virtue of any purchaſe] Upon theſe words a caſe frequently happeneth, where a perſon comes in as heir at law to an eſtate purchaſed by his father or other anceſtor, ſince the 25th of *March* 1723, for leſs than the ſum of 30*l.* *bona fide* paid. And it doth not appear as yet to have been determined, whether ſuch heir at law, coming in by deſcent, and not by his own purchaſe, ſhall be deemed thereby to gain a ſettlement. It ſeemeth that he ſhall not: Otherwiſe the act would be of little avail; for the purchaſer may die the next day; and the conſequence would be, that this act ſhould not be of force, but only during the life of the firſt purchaſer. And the ſpecial penning of the act ſeemeth to guard againſt this objection; for it doth not ſay, *By virtue of any purchaſe by him made*, but only in general *By virtue of any purchaſe* (that is to ſay, by whomſoever made). And if the perſon who firſt comes in by deſcent to ſuch a purchaſed eſtate, ſhall not thereby gain a ſettlement; then alſo, for the ſame reaſon, neither ſhall his heirs, with reſpect to the ſame eſtate, for ever ſo many generations forward. And the like will hold in the caſe of a deviſe.

The ſum of 30*l.* bona fide *paid*] *E.* 13 *G. St. Paul's Walden* and *Kempſton*. There was a ſpecial order ſtated at ſeſſions. A perſon purchaſed a copyhold tenement in *St. Paul's Walden*; which with the fine, and fees paid to the court, amounted to 30*l.* and it appeared by the ſame order, that the officers of the pariſh of *Kempſton* had given him 40*s.* towards paying his fine and fees. Therefore it

was

was inſiſted, that this was fraudulent, and not a good purchaſe within the ſtatute, ſufficient to gain a ſettlement. But by the whole court; we cannot take notice of its being fraudulent, unleſs the juſtices had adjudged it ſo. And the order was confirmed. *Foley* 238.

E. 8 *G.* 2. *Tedford* and *Waddington.* On a ſpecial order of ſeſſions it was ſtated, that *Francis Gill* contracted for the purchaſe of a houſe in *Waddington*, for 39*l.* and paid 9*l.* out of his own money, and the remaining 30*l.* was by his order paid by another perſon, to whom the premiſſes were mortgaged for it; that he had lived upon it four years, when the mortgage was foreclоſed, and he turned out: and the queſtion being, whether he had gained a ſettlement hereby, the ſeſſions adjudge that this was a fraudulent purchaſe, and conſequently no ſettlement gained thereby. But by the court, The order muſt be quaſhed: the purchaſe money by the ſtatute need only be 30*l.* and the advancing the money by another, makes no alteration. And the fact being ſpecially ſtated, we can judge as well as the ſeſſions, whether it be fraudulent or not. The circumſtance of his continuing four years, ouſts all preſumption of fraud. *Str.* 1014. *Seſſ. C. V.* 2. 164.

H. 15 *G.* 2. *Cotleigh* and *Stokeland.* An acre in *Cotleigh*, wherein a perſon had a leaſe for lives, was mortgaged to the pauper for 15*l.* When the mortgagor died, there was two years intereſt due to the pauper, and he alſo owed 18*l.* 10*s.* to the pauper by bond and ſimple contract. And it was agreed between the widow and the pauper, that he ſhould adminiſter, and take all but the houſhold goods; which he did. And the ſeſſions having held, that his taking to this acre, and living on it 8 years, did not gain a ſettlement under the act, which requires a *bona fide* payment of 30*l.* the court now quaſhed the order, it being to all intents of law and equity the ſame as actual payment of the conſideration money. *Str.* 1162.

2. How far a certificate perſon ſhall gain a ſettlement by an eſtate of his own, notwithſtanding the aboveſaid ſtatute of the 9 & 10 *W.*

E. 5 *G. Burclear* and *Eaſtwoodhay. Abraham Hacket* comes with a certificate into the pariſh of *Eaſtwoodhay*, and afterwards marries one *Sarah Smith.* Her father ſurrenders to her a copyhold eſtate of 20*s.* a year, and ſo the huſband had it in her right. By the court; The man has gained a ſettlement in *Eaſtwoodhay*; for a man cannot be turned out of his own, be it never ſo ſmall. And by *Forteſcue* J. the party here could not be removed: and not removable, and gaining a ſettlement are the ſame thing. Then

Whether a certificate perſon may gain a ſettlement by reſiding on his own eſtate.

Then it was objected, that the perſon being a certificate perſon, he gains no ſettlement, unleſs he rents a tenement of 10*l.* a year, or exerciſes an annual office; and that ſtatute being an explanatory act, is not it ſelf to be explained, and conſequently cannot be taken farther than the words. But by the court, This is not an explanatory act, but a new law, and muſt therefore receive a liberal conſtruction. The exceptions in the ſtatute prove this caſe, being a caſe more reaſonable, than either that are there mentioned; and the parliament never intended to put a certificate man in a worſe condition than another perſon. *Caſ. of S.* 121. *Str.* 163.

H. 16 *G.* 2. *K.* and *Stansfield.* If an eſtate deſcends to a certificate perſon, it gains him a ſettlement, becauſe it is by operation of law, and not by an act of his own; and as the ſtatute hath been laid open in caſes of deſcents, it ought to be ſo in caſes of purchaſes. And by *Lee* Ch. J. the ſtatute of the 8 & 9 *W.* hath beceived a liberal conſtruction; and hath been held to gain a ſettlement, both in deſcents, and deviſes, and purchaſes. On the 13 & 14 *C.* 2. the conſtruction has been, that let the value be what it will, a perſon cannot be removed from his own; and it ſeems to be the ſame upon the certificate act, for if he is not removable within the 13 & 14 *C.* 2. he is not removable on the certificate act. *Seſſ. C. V.* 1. 316.

T. 16 *G.* 2. *Deddington* and *Dunfrew.* A certificate man purchaſed a houſe for 42*l.* lived in it many years, then ſold it, and becoming chargeable was ſent back. It was inſiſted, that the 9 & 10 *W. c.* 11. ſaying, *a certificate man ſhall gain a ſettlement by no act whatſoever, unleſs the taking* 10*l. a year, or ſerving an annual office,* this man, notwithſtanding the purchaſe, might be ſent back: and it was ſaid to differ from the caſe of *Burclear* and *Eaſtwoodhay,* where the ſurrender of a copyhold to the certificate man's wife was held to gain him a ſettlement; becauſe there it was not his own act (as this purchaſe is) but it came to him by operation of law. But the court did not think this a ſufficient diſtinction, and ſaid a purchaſe was in its nature an excepted caſe; and his ſelling it afterwards made no alteration. *Str.* 1193.

H. 6 *G. Ivinghoe* and *Stonebridge.* A certificate man made a purchaſe in *Stonebridge,* and his *apprentice* lived with him for above 40 days upon the purchaſed eſtate there: And by the court, the apprentice thereby gained a ſettlement; for when a certificate man maketh a purchaſe, he immediately ceaſeth to be there in nature of a certificate man,

man, and becomes a ſettled inhabitant, and conſequently his apprentice with him. *Str.* 266.

Upon this laſt occaſion of mentioning certificates, it is obvious to obſerve from all that hath been ſaid thereupon, that there are divers good reaſons for requiring certificates with perſons coming to ſettle in any place; namely, that perſons reſiding under them can gain no ſettlement, neither by apprenticeſhip, nor by ſervice, nor by giving notice, nor by paying pariſh rates; that they can ſettle neither apprentices nor ſervants; that if they become chargeable, it is certainly known whither to remove them, and the pariſh ſhall be paid for the removal, and for their maintenance in the mean time; and that if they fall ſick, and cannot be removed, the pariſh which gave the certificate muſt maintain them: none of all which can be without a certificate. Which reaſons will hold proportionably for pariſhes not granting certificates in ordinary caſes; for it is far more than an equal chance, but that they will have the certificated perſons again, and in a worſe condition. Obſervation.

3. How far reſidence upon a man's own eſtate is neceſſary, to gain him a ſettlement.

(1) *H.* 8 *W. Riſelip* and *Harrow.* By *Holt* Ch. J. Having land in a pariſh will not make a ſettlement, but living in a pariſh where one has land, will gain a ſettlement without notice; for the act never meant to baniſh men from the enjoyment of their own lands. 2 *Salk.* 524. Reſidence neceſſary.

M. 8 *G. Wokey* and *Hinton Blewet.* A perſon ſettled at *Hinton Blewet*, had an eſtate deſcended to him in *Wokey*; whereupon the juſtices ſend him thither as to the place of his laſt ſettlement. But by the court, The order muſt be quaſhed; for it is no ſettlement nor inhabitation, though if he ſhould go thither he could not be removed: it may be a great injury to ſend him away from a good trade at *Hinton Blewet*, to perhaps half an an acre of land, wherein he has but a term. *Str.* 476.

E. 8 *G.* 2. *K.* and *St. Mary Berkhamſtead.* The huſband ran away, and it was not known whether he was alive or dead; in the mean time the wife had a houſe deviſed to her in *Northchurch*, and ſhe and her children went to live there. The queſtion was, Whether by continuing therein 40 days, they gained a ſettlement. The court ſeemed to be of opinion, ſince it was not known that the huſband was dead, he muſt be ſuppoſed to be alive, and in that caſe that the wife could not gain a ſettlement for her ſelf, but muſt follow the huſband's ſettlement; and that the huſband having not reſided 40 days at *Northchurch*, in the ſaid houſe

houſe unremovable, he hath gained no ſettlement there. *Seſſ. C. V.* 2. 182.

Reſidence on the ſame eſtate, not neceſſary.

(2) *M.* 12 *G.* 2. *Souton* and *Sidbury*. A perſon who lived with his family at *Souton*, having an eſtate at *Sidbury*, which the tenant gave up, went thither, and lodged in an alehouſe as a gueſt, without having any certain room there, and ſtaid from *November* till *April*, but ſometimes went to *Souton* where his children and family were, and to other places as his occaſions required, poſſeſſed and managed his eſtate, by repairing fences, hoeing turnips, and the like. The queſtion was, Whether ſuch inhabiting, and not upon the eſtate, would gain a ſettlement? And the court were of opinion it would, and that it made no difference whether it were in his own houſe or in an alehouſe; for being in the ſame pariſh, he could not be removed. *Seſſ. C. V.* 2. 150.

Reſidence for 40 days together not neceſſary.

(3) Another queſtion was moved in the ſame caſe, Whether ſince he did not reſide there for 40 days together, but for more than 40 days in the whole, ſuch reſidence ſhall gain a ſettlement? And by the whole court; It is not neceſſary upon the ſtatute, that the reſidence ſhould be for 40 days ſucceſſively. *Seſſ. C. V.* 2. 150. *And.* 345.

And, *T.* 13 *G.* 2. *St. Neot's* and *St. Clere*. A perſon at *St. Neot's* was hired and ſerved a year; and then he returned to *St. Clere*, where he had a joint freehold with his mother, and lived there backwards and forwards, but not 40 days at a time, but more in the whole, and afterwards ſold the ſame. The queſtion was, Whether here was any ſettlement at *St. Clere?* By the court; This depends on the ſtatute of the 13 & 14 *C.* 2. and 40 days inhabitancy together is not requiſite, and the man was well ſettled at *St. Clere*, for there was a time, when by reſidence of 40 days he could not be removed from thence. *Seſſ. C. V.* 1. 318. *Str.* 1116.

Concluſion.

AND now upon the whole, having gone thro' this ſubject or ſettlements, and I hope with ſome perſpicuity and exactneſs; the firſt reflection which will ariſe in the mind of every reader, I think, will be, to admire the ſubtilty of human wit. It was the obſervation of a wiſe king of *Iſrael* long ago, that god made man upright, but they have ſought out many inventions. A ſtranger to our laws would not readily conjecture, how many doubts and knotty difficulties have been formed upon the conſtruction of one ſhort act of parliament, and one ſingle clauſe of that one ſhort act, and which upon the face of it doth not appear to carry any conſiderable difficulty.

The

The next thing that occurs, is to reverence the wiſdom of the court of king's bench, in clearing up thoſe difficulties, and eſtabliſhing the ſenſe of the law upon ſolid and firm grounds.

Nevertheleſs it is obvious to remark one defect of the law, which runs thro' this whole courſe of ſettlements, and that is, with regard to the ſettlement of *Scotchmen* and *Iriſhmen* in *England*; although the caſe before mentioned of *St. John's Wapping* and *St. Botolph's Biſhopſgate*, *H.* 28 *G.* 2. ſeemeth at laſt to have ſettled the matter with regard to their wives being *Engliſh* women, and their children born in *England*: If it ſhall be determined that they may gain ſettlements in *England* as *Engliſhmen* may do, then it ſeemeth but equal, that when likely to become chargeable, they may be removed to *Scotland* or *Ireland*, as other inhabitants to their lawful place of ſettlement, although they ſhould not become vagrants, and of conſequence actually chargeable. Or if not ſo; then, as they can bring no legal certificates from *Scotland* or *Ireland*, it ſeemeth but equal that they ſhould be put upon the ſame footing with *Engliſhmen* having certificates, and conſequently not in a condition to gain ſettlements otherwiſe than as certificate men may do.

But excepting in this one inſtance, and ſome very few others, which have been mentioned, and which one ſhort act of parliament would rectify, the law ſeems now to be well ſettled as to theſe matters; and conſequently the diſputes about ſettlements cannot ſo much ariſe from the uncertainty of the law, as from the uncertainty of the facts upon that law: and this, from the nature of the thing, muſt always be uncertain, as depending upon the teſtimony of witneſſes, and thoſe alſo for the moſt part of the meaneſt of the people.

There hath been alſo another cauſe of much altercation, upon appeals againſt orders of removal, which ariſes from ſome defect in thoſe orders themſelves, or from ſome error in the method of proceeding in relation thereto: which comes next to be conſidered.

III. Of removals.

i. Order of removal in general.
ii. Order of removal of a certificate perſon.
iii. Appeal againſt the order of removal.

i. Order

i. Order of removal in general.

The ſtatute of the 13 & 14 *C.* 2. *c.* 12. which hath been ſo often canvaſſed in treating concerning ſettlements, is not yet to be diſmiſſed by us, but will appear again under this head, in a new and quite different light; as being that upon which all the orders of removal are or ought to be eſtabliſhed. And in this view, there have been as many caſes adjudged upon it, as in the other, altho' not altogether in ſo great a variety.

In treating of this ſubject, we will firſt ſet forth the ſtatutes: Then the eſtabliſhed form of an order of removal thereupon: And then take the ſame in pieces orderly and diſtinctly, thereby to diſcover the ſeveral ſhelves and rocks upon which numberleſs orders have been ſhipwrecked.

It is true, the ſtatute of the 5 *G.* 2. whereby errors in point of form may be amended at the ſeſſions, hath in ſome ſort remedied theſe defects; but that it may appear how ſuch errors are to be amended, and as it will be better if the order be ſuch as ſhall need no amendment, and as it ſtill remains a doubt upon that ſtatute, what ſhall be deemed matter of form, and what ſhall be deemed of the ſubſtance of the order, this method is not the leſs to be purſued upon that account.

By the 13 & 14 *C.* 2. *c.* 12. it is enacted as follows: *Whereas by reaſon of ſome defects in the law, poor people are not reſtrained from going from one pariſh to another, and therefore endeavour to ſettle themſelves in thoſe pariſhes where there is the beſt ſtock, the largeſt commons or waſtes to build cottages, and the moſt woods for them to burn and deſtroy, and when they have conſumed it, then to another pariſh, and at laſt become rogues and vagabonds, it is enacted, That it ſhall be lawful, upon complaint made by the churchwardens or overſeers of any pariſh, to any juſtice of the peace, within* 40 *days after any ſuch perſon coming ſo to ſettle in any tenement under the yearly value of* 10*l. for any two juſtices of the peace (one whereof is of the* quorum) *of the diviſion where any perſon that is likely to become chargeable to the pariſh ſhall come to inhabit, by their warrant to remove and convey ſuch perſon to ſuch pariſh where he was laſt legally ſettled, unleſs he give ſufficient ſecurity for the diſcharge of the ſaid pariſh, to be allowed by the ſaid juſtices.* ſ. 1.

And if ſuch perſon ſhall refuſe to go, or ſhall not remain in ſuch pariſh where he ought to be ſettled, but ſhall return of his own accord to the pariſh from whence he was removed, one juſtice may ſend him to the houſe of correction, there to be puniſhed

niſhed as a vagabond. ſ. 3. And by the 17 *G.* 2. *c.* 5. *All perſons who ſhall unlawfully return to ſuch pariſh or place from whence they have been legally removed by order of two juſtices, without bringing a certificate from the pariſh or place whereunto they belong, ſhall be deemed idle and diſorderly perſons; and any one juſtice may commit them (being thereof convicted before him, by his own view, or by their own confeſſion, or by the oath of one credible witneſs) to the houſe of correction, there to be kept to hard labour for any time not exceeding one month.* ſ. 1.

And if the churchwardens and overſeers of the pariſh to which he ſhall be removed, refuſe to receive ſuch perſon, and to provide work for him, as other inhabitants of the pariſh; any juſtice of that diviſion ſhall bind any ſuch officer in whom there ſhall be default to the aſſizes or ſeſſions, there to be indicted for his contempt in that behalf. 13 & 14 C. 2. c. 12. ſ. 3.

And by the 3 *W.* *c.* 11. *If the churchwardens or overſeers of the pariſh or town to which the perſon ſhall be ſo removed, ſhall refuſe or neglect to receive the ſaid perſon, he or they ſo offending ſhall (on proof thereof by the oath of two witneſſes before one juſtice of the place to which the perſon ſhall be removed) forfeit for each offence* 5 l. *to the uſe of the poor of the pariſh or town from which ſuch perſon was removed, to be levied by diſtreſs, by warrant to the conſtable of the pariſh or town where ſuch offender dwells; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit the offender to the common gaol for* 40 *days.* ſ. 10.

Upon complaint made by the churchwardens or overſeers of any pariſh to any juſtice of the peace] By theſe words one juſtice alone hath cognizance of the matter, ſo far as concerneth the complaint only; and by virtue thereof may iſſue his warrant to bring the party before him in order to his examination; or he may iſſue his warrant, to bring the party before himſelf and another juſtice, in order to hearing and determining the complaint; for he himſelf alone cannot hear and determine, but only bring the matter into the courſe of being heard and determined by two juſtices: and therefore it is moſt uſual for the two juſtices originally to iſſue their joint precept to bring the party before them for that purpoſe. Nevertheleſs, if the party is willing, he may go voluntarily before the juſtices, at the requeſt of the overſeers, without any warrant at all.

The form of which warrants or precepts aforeſaid, where they are requiſite, may be to this effect:

Warrant of one juſtice for a perſon to be examined concerning his ſettlement.

Weſtmorland. { To the conſtable of———.

FORASMUCH *as complaint hath been made before me ——one of his majeſty's juſtices of the peace in and for the ſaid county, by the churchwardens and overſeers of the poor of the pariſh of—— in the county aforeſaid, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor produced any certificate owning him to be ſettled elſewhere, and that the ſaid* A. P. *is likely to become chargeable to the ſaid pariſh of———. Theſe are therefore to require you to bring the ſaid* A. P. *before me, to be examined concerning the place of his laſt legal ſettlement. Herein fail you not. Given under my hand and ſeal the—— day of——.*

Warrant of two juſtices in order to the adjudication.

Weſtmorland. { To———

FORASMUCH *as complaint hath been made before us ——— two of his majeſty's juſtices of the peace in and for the ſaid county, and one of us of the* quorum, *by the churchwardens and overſeers of the poor of the pariſh of———in the ſaid county, that* A. P. *hath come to inhabit in the ſaid pariſh, not having gained any legal ſettlement therein, nor produced any certificate owning him to be ſettled elſewhere, and that he the ſaid* A. P. *is likely to become chargeable to the ſaid pariſh of———. Theſe are therefore to require you to bring the ſaid* A. P. *before us, at the houſe of——— in——— in the ſaid county, on—— the——— day of—— at the hour of—— in the afternoon of the ſame day, to be examined concerning the place of his laſt legal ſettlement, and to be further dealt withal according to law. Given under our hands and ſeals the—— day of———.*

It may alſo not be unfitting, eſpecially in caſes of doubt or difficulty, to give notice (if it may be) to the overſeers of the pariſh or place where the ſettlement is ſuppoſed to be, that they may attend, if they think proper, when the adjudication is made; which probably might prevent appeals oftentimes from ſuch adjudications and orders: Which notice may be to the effect following.

Summons

Summons to ſhew cauſe againſt an order of removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* ——— *in the county of* ———, *and to every of them.*

This is to ſummon you, or ſome of you, to appear (if you ſhall ſo think proper) before ———, *and ſuch other his majeſty's juſtices of the peace for the ſaid county of* W. *as ſhall be at the houſe of* ——— *in* ——— *in the ſaid county of* W. *on the* ——— *day of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to ſhew cauſe why* A. P. *ſhould not be removed from the pariſh of* ——— *in the ſaid county of* W. *to your ſaid pariſh of* ———. *Given under* —— *hand* — *and ſeal* — *this* ——— *day of* —— *in the year of our lord* ——.

And then the general form of an order of removal, as grounded upon the ſtatute of the 13 & 14 *C.* 2. above recited, may be thus:

The form of a general order of removal.

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife,* Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, have come to inhabit in the ſaid pariſh of* Orton, *not having gained a legal ſettlement there, nor produced any certificate owning them or any of them to be ſettled elſewhere, and that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children are likely to be chargeable to the ſaid pariſh of* Orton; *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſſes, Do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and*

Thomas *and* Agnes *their children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We do therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome, or one of you, to convey the ſaid* John Thompſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the ——— day of ——— in the ——— year of the reign of his ſaid majeſty king* George *the ſecond.*

To the churchwardens and overſeers of the poor of the pariſh of Orton] If a place is extraparochial, and hath no overſeers, the juſtices cannot remove from thence, becauſe there are none neither to complain nor to convey; but the juſtices ought firſt to appoint overſeers, and then to remove. 2 *Salk.* 487. *Foley* 97, 98.

Of the pariſh of Orton *in the ſaid county of* Weſtmorland] The county in the margin is not ſufficient, but it muſt appear in the body of the order that the place is in ſuch county, either expreſly, or by ſome words of reference, as *in the ſaid county, or in the county aforeſaid.* Caſ. of S. 151. Seſſ. C. V. 2. 181.

And to the churchwardens and overſeers of the poor of the pariſh of Penrith *in the county of* Cumberland] As the juſtices cannot ſend from an extraparochial place, unleſs they have overſeers, ſo neither can they ſend to an extraparochial place, which hath no overſeers, becauſe there are none to receive them. 2 *Salk.* 487. *Foley* 97, 98.

E. 1 *An.* *St. George's* and *St. Olave's.* The order was to convey one *Thomas Gill* to the pariſh of *St. Olave*, and it was directed, To the churchwardens and overſeers of the poor of the pariſh of *St. Olave.* Quaſhed: for they ought and can only order the pariſh officers where the intruſion is made, to make the removal. 2 *Salk.* 493.

Upon the complaint] *H.* 12 *G.* 2. *K.* and *Hareby.* It was moved to quaſh an order of removal, becauſe it did not ſet forth any complaint made: And by the court, the objection is fatal, for the complaint is the foundarion of the juſtices juriſdiction. *Andr.* 361.

Upon

Upon the complaint of the churchwardens and overſeers of the poor] *E.* 1 *An. Weſton Rivers* and *St. Peter's*. Exception to an order of removal, in that it was ſaid to be upon complaint only, and not of the churchwardens or overſeers. By the court; This exception is fatal; for no one can diſturb a man coming into a pariſh, but they that have authority to do it: A complaint from one not concerned is nothing; it may be the pariſh is willing to keep him. 2 *Salk.* 492.

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid*] *M.* 9 *An. Spalding* and *St. John Baptiſt*. The order was, To the churchwardens and overſeers of the poor of the pariſh of *Spalding*, and to the churchwardens and overſeers of the poor of the pariſh of *St. John Baptiſt*: Whereas complaint hath been made by you——It was moved to quaſh the ſame for the uncertainty, becauſe it did not ſay by which: But by *Parker* Ch. J. Sure that is well enough, for it is upon complaint of the right, if both complain. *Foley* 267.

Unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace] An order was quaſhed, becauſe it did non appear that it was made by two juſtices: It was only, Whereas complaint hath been made unto us; without reciting their authority as juſtices. 5 *Mod.* 322.

Two of his majeſty's juſtices of the peace] *M.* 4 *G. K.* and *Weſtwoodhay*. On complaint to one juſtice, two juſtices adjudge and remove; and it was held to be well: Otherwiſe, where one juſtice ſets his hand to the order in the abſence of the other. *Caſes of S.* 107. *Str.* 73.

T. 11 *G.* 2. *K.* and *Wykes*. It was held, that though the complaint may be to one juſtice, yet the examination ought to be by two, and thoſe the ſame who ſign the order of removal. *Str.* 1092.

Juſtices of the peace in and for the ſaid county] *M.* 12 *An. Q.* and *Uplin*. The order was quaſhed, becauſe it did not ſay that they were juſtices of the peace, but only juſtices of the county. *Caſes of S.* 27.

In and for the ſaid county] *M.* 13 *G. K.* and *Owlton*. Exception was taken to an order, for ſaying——unto us two of his majeſty's juſtices of the peace *in* the county aforeſaid; for that by this it appears only that they lived in the county, and not that they were juſtices *for* that county: And the court held this to be a fatal exception,

and quaſhed the order for that cauſe. *Seſſ. C. V.* 2. 76. 2 *Salk.* 474.

The ſaid county] *M.* 8 *W.* It was objected to an order, that it did not appear thereby that the juſtices were of the *diviſion*, which is required by the ſtatute: But this objection was overruled, for that the ſtatute therein is only directory. 2 *Salk.* 473.

And one of us of the quorum] Abundance of orders formerly have been quaſhed, for not ſetting forth, that one of the juſtices was of the *quorum*; but now by the 26 *G.* 2. *c.* 27. no order ſhall be ſet aſide for that defect only.

But if in fact neither of the juſtices ſhall be of the *quorum*, it ſeemeth neverthelefs that ſuch order ſhall not be good; for altho' the ſtatute doth not require that the order ſhall ſet forth one of the juſtices to be of the *quorum*, yet it doth require that one of them ſhall actually be ſo. And there are many towns corporate whoſe charters have no *quorum*, but only do conſtitute certain of the chief officers juſtices to keep the peace, without giving them power to hear and determine felonies, treſpaſſes, and other miſdemeanors: That is to ſay, they have the power which the juſtices of the county at large have by the firſt aſſignment in the commiſſion of the peace, which is the ſame that the conſervators of the peace had by the common law, and is all that the juſtices of peace had at firſt by their commiſſion. The power of hearing and determining, which they have now by the ſecond aſſignment in the commiſſion, and which only implies a *quorum*, is a ſeparate and diſtinct authority, and was ſuperadded to the former ſome years after the inſtitution of the office of juſtices of the peace; and this power the juſtices in divers towns corporate have not, and conſequently can have no *quorum*.

E. 6 *G.* *Albright* and *Skipton*. Upon appeal from an order of removal made by two juſtices (one of the *quorum*); the ſeſſions, reciting that they had peruſed the charter of *Albright*, and it not appearing thereby that the two juſtices were either of them of the *quorum*, therefore they quaſhed the order of removal. But by the court, The order of ſeſſions muſt be quaſhed; not for want of any power in the ſeſſions to look into the juriſdiction of the two juſtices, for that they certainly have; but becauſe that want of juriſdiction is not ſufficiently alledged; ſince they might have a juriſdiction, though it did not appear upon the charter of *Albright*. The ſeſſions ſhould have ſaid in general, that it appeared to them, that the two juſtices were neither of them of the *quorum*, and that would have been

been good cauſe to quaſh the order of the two juſtices. *Str.* 300.

That John Thomſon] *M.* 11 *An. Southwell* and *Needwell.* Whereas a certain woman hath intruded, Theſe are therefore to require you to convey: Objection, It is not ſaid who this woman was. And by *Parker* Ch. J. You muſt either name her, or ſay a certain woman unknown. *Caſ. of S.* 57.

T. 10 *An.* Caſe of *Newington.* Whereas ſuch a perſon hath intruded into the pariſh, and is likely to become chargeable; Theſe are therefore to require you to remove him *with three children.* Quaſhed as to the children, for they have removed more than is complained of. *Caſ. of S.* 45.

Mary *his wife,* Thomas *their ſon*] *H.* 10 *W. Johnſon's* caſe. Order to remove a man and *his family,* not good; becauſe too general: for ſome of the family might not be removable. 2 *Salk.* 485.

M. 5 *G. Beaton* and *Siſton.* Order for removal of *Thomas Block* and his family: Upon the firſt reading, quaſhed as to the family, becauſe too general. *Str.* 114.

T. 9 *W. Flixton* and *Roſton.* Order to remove *Jane Smith* and her five children; Quaſhed as to the children, for the uncertainty; becauſe it neither tells the names nor ages of the children: for ſhe might have more children than five, and ſome of thoſe five might have gained ſettlements. *Seſſ. C. V.* 1. 11. *Foley* 278.

T. 8 *G. Hobey* and *Kingſbury.* Two juſtices adjudging the ſettlement of the huſband to be at *Kingſbury,* and that he is likely to become chargeable to *Hobey,* ſend him, his wife, and ſon of one year old, to *Kingſbury*; And whether this was good as to the wife and child, was the queſtion: And it was held to be well enough; and the order was confirmed. *Str.* 527.

Thomas *their ſon aged* 8 *years, and* Agnes *their daughter aged* 4 *years*] *M.* 9 *An. Q.* and *Middleham.* Order to remove a child, of the age of ten years, to *Middleham,* becauſe *Middleham* was the place where his father was laſt legally ſettled. Quaſhed by the court; for that there was no adjudication that *Middleham* was the place of the child's laſt legal ſettlement, and at that age it might have gained a ſettlement. *Foley* 271.

T. 10 *An. Ringmore* and *Petworth.* The order was, Whereas ſuch a perſon and his 3 children are likely to become chargeable, and their laſt legal ſettlement was at *Ring-*

more. It was moved to quaſh the ſame, becauſe the childrens ages were not ſet forth. But by the court; It is not neceſſary in this caſe; for the order ſays, they were laſt legally ſettled in *Ringmore*, and then no matter what their ages are. *Caſ. of S.* 41.

H. 11 *G. K.* and *Trinity.* This rule was laid down; Every order that concerns the removal of a father and his children, ought to ſhew the ages of the children, for they may have gained a ſettlement in ſome other right, as by being apprentices or ſervants; therefore their age ought to be ſet forth, that it may appear to the court, that by reaſon of their infancy they have not gained any ſettlement in their own right, but have only a relative ſettlement from their father. Seven years is an age that the court will preſume a child could gain a ſettlement at, in his own right; but if it appears upon the order that the child was above 7 years old, the order muſt ſet forth, that ſuch child hath not gained a ſettlement in his own right. *Seſſ. C. V.* 2. 74.

Have come to inhabit] *E.* 12 *An.* 2. and *Graffham.* The order ſets forth, that *Henry Tate* and his wife do *endeavour* to intrude into the pariſh. And quaſhed by the court; for that he cannot be removed out of the pariſh, unleſs he hath come into it. *Caſ. of S.* 16.

Not having gained a legal ſettlement there] *E.* 1 *An. Wotton Rivers* and *St. Peter's.* Exception to an order of removal, that it was not ſaid, that the poor perſon did not rent a tenement of 10 *l.* a year, according to the words of the act. As to which, *Holt* Ch. J. ſaid, that *before* the 13 & 14 *C.* 2. two juſtices did remove by conſequence of law, upon the 43 *El.* becauſe that ſtatute makes proviſion, that every pariſh ſhall maintain its own poor; therefore the juſtices conſidered who were properly the poor of a pariſh, and they were held to be ſuch as were there ſettled a convenient time, which was thought a month, ſo that a month's abode made an inhabitant. But there being ſeveral doubts made about this matter, therefore to ſettle the ſame, the ſtatute of the 13 & 14 *C.* 2. was made; upon which ſtatute this queſtion now ariſes, *viz.* Since the power to remove a poor perſon being not wholly founded on the ſtatute of the 13 & 14 *C.* 2. but on the law as it was before the making of that ſtatute, whether ſuch an order as would ſerve for a removal before that ſtatute, would ſerve ſince, or whether the ſtatute obliges the juſtices to alter the form of their orders; and this depends upon the operation of the ſtatute, whether it was by way of juriſdiction or reſtriction;

ſtriction; and upon ſearching of precedents by the ſecondary he found, that the orders before this ſtatute were all without this clauſe, and ſo were the orders ſince; whereupon, as to this point, the order was held good: And if the fact is, that the perſon removed doth rent a tenement of 10*l.* a year, it ought to be remedied by way of appeal. 2 *Salk.* 493. 3 *Salk.* 254.

Nor produced any certificate owning them or any of them to be ſettled elſewhere] For by the 8 & 9 *W. c.* 30. If they have a certificate, they cannot be removed for being likely to be chargeable, nor until they do actually become chargeable. But if the order ſet forth that they are actually become chargeable, then this clauſe therein, concerning the certificate, is ſuperfluous.

Likely to become chargeable] *Scrivenham* and *St. Nicholas.* Order, not ſaying that the party was likely to become chargeable: Quaſhed. 3 *Salk.* 255.

H. 4 *G. Teelby* and *Willerton.* Order, Whereas complaint hath been made, that Anne Stamp *may* become chargeable,—We adjudge the ſame to be true. Quaſhed; for that the act enables the juſtices only to remove perſons likely to become chargeable, and not perſons that poſſibly may be chargeable, for no one can ſay who may not be chargeable; and there is as much difference in this caſe between *may* and *likely*, as between a poſſibility and a probability. *Seſſ. C. V.* 1. 117. *Str.* 77.

T. 10 *An.* Order, Whereas ſuch a perſon will become chargeable, if permitted to abide. Objected, this is uncertain; it may be ten years hence; Quaſhed. *Caſes of S.* 39.

Note; It doth not appear from any adjudged caſe, that upon appeal it was ever controverted, whether the perſon was or was not likely to become chargeable. And in the caſe of *South Sydenham* and *Lamerton*, *T.* 3 *G.* Mr. J. *Eyre* ſaid, that by the words of the act, living on a tenement under 10*l.* a year, and likely to become chargeable, are convertible terms. *Seſſ. C. V.* 1. 115.

Nevertheleſs, complaint muſt firſt be made, that the party is likely to become chargeable, before the juſtices can remove. And, in the caſe of *K.* and *Wykes*, *T.* 11 *G.* 2. an information was granted againſt a juſtice, for taking the examination of a perſon in order for his removal, upon the officers complaining, that he endeavoured to gain a ſettlement in the pariſh contrary to law; without complaining at the ſame time, that he was likely to become chargeable. *Andr.* 238.

To the ſaid pariſh of Orton] *T.* 10 *An. Q.* and *Bradford.* ——Likely to become chargeable, but not ſaid to what pariſh; Quaſhed. *Caſes of S.* 40.

But in the caſe of *K.* and *Witham ſuper montem*; *H.* 5 *G.* By the court: *It appearing to us that he is likely to become chargeable*, is ſufficient, without ſaying *to the pariſh from* whence removed; for it is not to give a juriſdiction, but only the reaſon of the judgment. *Str.* 142.

And, *M.* 7 *G. Maidſtone* and *Dething.* It was held well enough in an order of removal, to ſhew a complaint that the party is come into the pariſh of *Dething*, and is likely to become chargeable, without ſaying farther, *to the ſaid pariſh of* Dething. *Str.* 393.

And, *E.* 12 *G. K.* and *Leofield.* An order of removal, whereby a perſon was adjudged likely to become chargeable, without ſaying, *to the pariſh from whence removed*, was confirmed. *Str.* 698.

Upon due proof made thereof, as well upon the examination &c.] *H.* 13 *G.* 2. *K.* and *Fiſherton Dallemer.* Upon *due conſideration* was held to be ſufficient; for that due conſideration implies a due examination. *Seſſ. C. V.* 2. 45.

Examination] *T.* 12 *W. Ware* and *Stanſtead Mount Fitchet.* Exception to an order, for that it was ſaid, it appears upon examination *before us or one of us.* By the court; The examination ought to be before both, becauſe both are to make the judgment of removal. And *Gould* J. ſaid, the ſtatute directed, and the practice was, to make *complaint* to one juſtice, and he grants his warrant to bring the poor man before two juſtices, and then they two examine and remove. 2 *Salk.* 488.

Examination of the ſaid John Thomſon] *T.* 11 & 12 *G.* 2. *K.* and *Wykes.* A perſon ought to have notice, and be heard before he be removed: for he may produce a certificate, or give other ſufficient ſecurity, or ſhew cauſe otherwiſe why he ought not to be removed; eſpecially as he himſelf perhaps, by the removal, is likely to be the greateſt ſufferer: and therefore natural juſtice requires, that he be not condemned unheard. *Andr.* 238.

Of the ſaid John Thomſon *upon oath*] In the caſe of *K.* and *Wykes* laſt abovementioned, one juſtice took the examination, and other two juſtices removed upon that ſole examination, and in the order did ſet forth that the party was examined before themſelves; for which, and for not ſummoning the party before them, an information was granted againſt the two juſtices. *Andr.* 238.

Upon

Upon oath] *H.* 10 *G. Munger-hunger* and *Warden.* Exception to an order, for that it is ſaid to be made upon *due examination*, without ſaying *upon oath*: By the court, This is ſufficient; for where it is ſaid to be made upon due examination, it ſhall be intended to be upon oath. *Seſſ. C. V.* 2. 40.

Do adjudge the ſame to be true] *T.* 13 *W. Suddeſcomb* and *Burwaſh.* Order quaſhed, becauſe it was only ſaid to be complained by the officers, that the perſon removed was likely to become chargeable, but not adjudged ſo by the juſtices. 2 *Salk.* 491.

H. 4 *G. K.* and *Weſtwood.* Order quaſhed, becauſe the juſtices only ſay, *We order him to be removed to ſuch a place, as the place of his laſt legal ſettlement*, without adjudging that to be the place. *Str.* 73.

T. 3 & 4 *G.* 2. *K.* and *Minchin-Hampton.* Order, Whereas complaint is made to us, that ſuch a perſon is now become chargeable, we do adjudge that the laſt place of his lawful ſettlement is in the pariſh of *Minchin-Hampton.* Objected, that here is no adjudication that he is likely to become chargeable; and quaſhed for this reaſon. *Seſſ. C. V.* 2. 93.

T. 4 *G. Stallingburgh* and *Haxhay.* On examination we *do believe* the ſame to be true. Quaſhed; for a man may believe a thing on uncertain evidence. *Seſſ. C. V.* 1. 131.

E. 10 *An. Waltham Magna* and *Parva.* Whereas ſuch a perſon is likely to become chargeable, as we are *credibly informed*, theſe are therefore to require you to remove: Quaſhed, for that here is no adjudication that he is likely to become chargeable; and this is only the belief of another. *Caſes of S.* 38.

And we do likewiſe adjudge that the lawful ſettlement] *E.* 9 *W. Bury* and *Arundel.* Whereas complaint hath been made unto us, that *Jacob Duckin* with his wife and children, came from his place of abode and laſt legal ſettlement in *Bury* to *Arundel*, We therefore require you to remove: Naught; for there is no adjudication of the juſtices which was his laſt legal ſettlement, but only a complaint that *Bury* was, which doth not appear whether true or falſe. 2 *Salk.* 479.

T. 12 *An. Eglium* and *Hartley-Wintly.* An order adjudges that a man was ſettled at ſuch a place; and therefore they remove his widow thither: Quaſhed; for that here was no adjudication of the widow's ſettlement, and

ſhe

ſhe might have gained a ſettlement after the death of her huſband. *Seſſ. C. V.* 1. 45.

T. 3 & 4 *G.* 2. *K.* and *Warnhill.* Adjudication that the *laſt legal place* of the pauper is at *Warnhill* in the county of *Berks.* Quaſhed; for that is no adjudication of the *ſettlement. Seſſ. C. V.* 2. 92.

M. 3 *An.* It was held, that *legal ſettlement* and *laſt legal ſettlement* are the ſame thing; becauſe by every new ſettlement the precedent is diſcharged. 2 *Salk.* 473.

M. 12 *An. St. Mary Ottery* and *St. Mary's.* The juſtices in their order ſay, that the poor perſon was laſt ſettled there *according to their knowledge:* By the court; They ſhould have ſaid, he was laſt ſettled there; an order is a judgment, and muſt be certain and poſitive: he might have been ſettled elſewhere, and they not know it. Quaſhed. *Caſes of S.* 32.

And provide for them] The ſtatute directs, that the place whither they are ſent ſhall receive and *provide* for them; for which reaſon the ſame is inſerted here in the order: but it ſeemeth that when the removal is into another county, thoſe words are unneceſſary, becauſe ineffectual; for that the juſtices in one county cannot take order for the relief of poor perſons in another county.

It may be proper here to ſubjoin one remarkable caſe of a removal, wherein there was no adjudication of the laſt ſettlement, and where the place removed to was not the place of the laſt ſettlement, and yet the order as to that was held to be good. *K.* and *Banbury.* A conſtable without a warrant brought a child from *Broughton* to *Banbury*; and two juſtices of *Banbury* made an order reciting the fact, to return the child to *Broughton*, there to be provided for according to law. The court held the order good, for returning the child to the wrong doers; and therefore that part of the order was affirmed; but it ought not to be ſaid, to be there provided for; but they are to be left to take their courſe according to law; therefore that part was quaſhed. *Comb.* 372. But it is plain that this removal was not in purſuance of the ſtatute of *C.* 2. but ſeems rather to have been by the conſtructive power of removing which the juſtices had upon the ſtatute of the 43 *El.*

So much concerning the uſual form of an order of removal: And after ſuch order and adjudication is made, that the ſame may appear upon record afterwards, in order

der to charge the parish, it was said by *Holt* Ch. J. (1 *Salk.* 406.) that the most regular way for the justices to proceed, is to make a record of the complaint and adjudication, and upon that to make a warrant to the churchwardens and overseers, to convey the persons to the parish to which they ought to be sent, and deliver in the record by their own hands into court the next sessions, to be kept there amongst the records, to charge the parish. But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise, that a removal was made in pursuance of such order: otherwise, how shall the parish be charged by an order which possibly they knew nothing of, and consequently could have no opportunity to appeal against. It is usual in some places, for the overseers who made the removal, to bring the original order to the next sessions, and there make oath, that they removed the party in pursuance of such order, and then if there appear to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And altho' such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless, for the order not appealed against is final without more. And as such order is a record of it self, and contains in it the adjudication of the justices, it seemeth that the court may record thereupon likewise, that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth, that unless it be upon appeal, they have no power to inquire concerning the removal, for that as to them is extrajudicial: But the justices, who made the order, have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded.

ii. Order of removal of a certificate person.

As it will appear from what hath been said under the former head, concerning the removal of poor persons having no certificate, that in most of the books there are many bad orders; so it will appear also from thence, and from what will be said under this head, concerning the removal of certificate persons, that as to this kind of re-

moval there is ſcarce one good order (which is a little ſurpriſing in a matter of daily practice), yea ſcarce one which is capable of being amended even by the ſtatute of the 5 *G.* 2. for there are objections which go to the very eſſence and ſubſtance of the order, eſpecially the want of proper adjudications, either that the party is become chargeable, or of the place of his laſt legal ſettlement (for he may have gained one after the certificate), or both: for a judgment without adjudging, is a contradiction; and where there is no judgment, there is in ſtrictneſs nothing to appeal againſt, but only an order that the pariſh ſhall receive and provide for a perſon, who for ought appears doth not belong to them.

By the 8 & 9 *W.* *c.* 30. *If any perſon who ſhall come into any pariſh or place, there to reſide, ſhall deliver a certificate to one of the churchwardens or overſeers there, ſuch certificate ſhall oblige the pariſh or place granting the ſame, to receive and provide for the perſon mentioned in the ſaid certificate, together with his family, as inhabitants of that pariſh, whenever they ſhall happen to become chargeable to, or be forced to aſk relief of the pariſh, townſhip, or place, to which ſuch certificate was given; and then, and not before, it ſhall be lawful for any ſuch perſon, and his children, tho' born in that pariſh, not having otherwiſe acquired a legal ſettlement there, to be removed, conveyed, and ſettled in the pariſh or place from whence ſuch certificate was brought.* ſ. 1.

And by the 3 *G.* 2. *c.* 29. *When any overſeer or other perſon ſhall remove back any perſons or their families, reſiding under a certificate, and becoming chargeable, to the pariſh or place to which they ſhall belong; ſuch overſeer or other perſon ſhall be reimburſed ſuch reaſonable charges as they may have been put unto in maintaining and removing ſuch perſons, by the churchwardens or overſeers of the place to which ſuch perſons are removed; the ſaid charges being firſt aſcertained and allowed of by one or more juſtices for the county or place to which ſuch removal ſhall be made; which ſaid charges, ſo aſcertained and allowed, ſhall, in caſe of refuſal of payment, be levied by diſtreſs and ſale of the goods of the churchwardens and overſeers of the place to which ſuch certificate perſon is removed, by warrant of ſuch juſtice or juſtices.* ſ. 9.

Form

Form of an order of removal of a certificate perſon.

Weſtmorland { To the churchwardens and overſeers of the poor of the pariſh of *Orton* in the ſaid county of *Weſtmorland*, and to the churchwardens and overſeers of the poor of the pariſh of *Penrith* in the county of *Cumberland*.

WHEREAS *complaint hath been made by the churchwardens and overſeers of the poor of the pariſh of* Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife,* Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, having for ſome time laſt paſt dwelt in the pariſh of* Orton *aforeſaid, being allowed ſo to do by reaſon of a certificate bearing date the* ——— *day of* ——— *in the year of our lord* —— *under the hands and ſeals of* A. C. *and* B. C. *churchwardens, and* A. O. *and* B. O. *overſeers of the poor of the ſaid pariſh of* Penrith, *atteſted by* A. W. *and* B. W. *two credible witneſſes, and allowed by* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of* Cumberland, *according to the directions of the ſeveral acts of parliament in ſuch caſe made and provided, are become chargeable to the ſaid pariſh of* Orton; *And whereas it appears to us, as well upon the oath of the ſaid* John Thomſon *as otherwiſe, that neither they the ſaid* John Thomſon, Mary *his wife,* Thomas *and* Agnes *their children, nor any of them, have gained any legal ſettlement ſince the date of the ſaid certificate: Whereby, and upon due conſideration had of the premiſſes, it appears to us, and we do hereby adjudge, that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, are become chargeable to the ſaid pariſh of* Orton, *and that the place of the laſt legal ſettlement of them and every of them is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *Theſe are therefore to require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome or one of you, to convey the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof, at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of*

the

the ſaid pariſh of Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the———day of———in the year of our lord———.*

Allowed by J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace*] *H.* 9 *An. K.* and *Newton.* Order for removing a certificate perſon, not ſetting forth that it was allowed by two juſtices, but adjudging the pariſh which granted the certificate to be the place of the laſt legal ſettlement. By Mr. *J. Probyn*; The order is good, for it ſets out that the *pauper* came by certificate, and adjudges that he was actually chargeable, and that *Newton* was the place of his laſt legal ſettlement, he having gained no ſettlement elſewhere ſince; which ſets out the whole reaſon of their judgment, and would make the ſettlement good, if there had been no certificate. *Seſſ. C. V.* 1. 149.

M. 7 *G. Barleycroft* and *Cole-overton.* Order of removal of a certificate perſon; It was not ſaid that the certificate was *atteſted*, but only that it was *allowed*. But by the court, The atteſtation is by the ſtatute made previous to the allowance, and therefore when they ſay it was allowed according to the act of parliament, we muſt intend it was atteſted, for otherwiſe it could not be ſo allowed. And the order was confirmed. *Str.* 402.

Are become chargeable] *E.* 9 *An. Q.* and *Brumſtead.* An order of two juſtices for the removal of a man that came into a pariſh by certificate, was quaſhed upon this exception; It was ſaid in the order, that they removed him, becauſe he was *likely to become chargeable:* And the whole court were of opinion, that the juſtices cannot remove a perſon that comes into a pariſh by certificate, till he is actually chargeable to the pariſh. 2 *Salk.* 530.

H. 4 *G. Teelby* and *Willerton.* The juſtices remove a certificate woman, being *likely* to become chargeable. But by the court; She is by the ſtatute not removeable, till ſhe actually becomes chargeable. And the order was quaſhed. *Str.* 77.

And we do hereby adjudge] *T.* 2 *An. Maldon* and *Fleetwick.* An order was made, reciting, that whereas complaint hath been made unto us, that ſuch a perſon, who is lately come into the pariſh with a certificate, is actually chargeable to the pariſh; theſe are therefore to require you to remove: And quaſhed, for that there was no adjudication. 2 *Salk.* 530.

T. 15 *G.* 2. *K.* and *Great Bedwin.* Order of removal of a certificate perſon, in which there was no complaint of the

the churchwardens or overſeers, nor any adjudication that the certificate perſon is actually become chargeable. On appeal, the ſeſſions in purſuance of the 5 *G.* 2. amend the order in theſe particulars, as matter of form only, and inſert in the ſaid order ſuch complaint and adjudication. And now the queſtion was, whether theſe amendments went only to matter of form, or to the ſubſtance and merit of the order. By *Lee* Ch. J. There has been but one caſe in this court on this act ſince the making of it, and that was not determined: The preſent ſeems to be a very ſtrong caſe againſt the power of amending. For there muſt be a *complaint* from the overſeers, otherwiſe the juſtices have no power to remove; and a certificate perſon muſt be *adjudged* to be actually chargeable, otherwiſe he cannot be removed: And theſe amendments might be the real merits on which this caſe depended. And it would be a detrimental conſtruction of the act, to take it ſo largely; and would be giving the ſeſſions an original juriſdiction. And quaſhed by the whole court. *Seſſ. C. V.* 2. 142. *Str.* 1158.

But after all, it doth not appear, how it becomes neceſſary in the order of removal, to take any notice of the certificate at all, or to make any further uſe of it than as evidence to the juſtices of the ſettlement: And if it is not neceſſary to recite it, it is better to omit the ſame; becauſe a miſrecital, either in the date, or in the names of the perſons, or in any other material part, will be fatal, for that then there will be no ſuch certificate as is there recited, and the order muſt fall of courſe. And I do not ſee, why the form may not be much more plain and ſimple, by drawing the ſame very little varied from the common form of an order of removal of other perſons having no certificate. It is true, where the perſons are only *likely to be chargeable*, it is then requiſite to ſet forth in the order that they have no certificate; for if they have one, they cannot be removed till they actually be chargeable. But if the order do ſet forth that they are chargeable, in that caſe it is not at all material whether they have a certificate or not; for in both caſes alike, they are then equally removeable. And if ſo, then the form may be this, both for a certificate perſon, and for a perſon having no certificate, who is actually become chargeable:

Weſtmorland. TO *the churchwardens and overſeers of the poor of the pariſh of* Orton *in the ſaid county of* Weſtmorland, *and to the churchwardens and overſeers of the poor of the pariſh of* Penrith *in the county of* Cumberland, *and to each and every of them.*

Upon the complaint of the churchwardens and overſeers of the poor of the pariſh of Orton *aforeſaid in the ſaid county of* Weſtmorland, *unto us whoſe names are hereunto ſet and ſeals affixed, being two of his majeſty's juſtices of the peace in and for the ſaid county of* Weſtmorland, *and one of us of the* quorum, *that* John Thomſon, Mary *his wife,* Thomas *their ſon aged eight years, and* Agnes *their daughter aged four years, have come to inhabit in the ſaid pariſh of* Orton, *not having gained a legal ſettlement there, and that the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children are now chargeable to the ſaid pariſh of* Orton; *We the ſaid juſtices, upon due proof made thereof, as well upon the examination of the ſaid* John Thomſon *upon oath, as otherwiſe, and likewiſe upon due conſideration had of the premiſſes, do adjudge the ſame to be true; and we do likewiſe adjudge, that the lawful ſettlement of them the ſaid* John Thomſon, Mary *his wife, and* Thomas *and* Agnes *their children, is in the ſaid pariſh of* Penrith *in the ſaid county of* Cumberland: *We do therefore require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Orton, *or ſome, or one of you, to convey the ſaid* John Thompſon, Mary *his wife, and* Thomas *and* Agnes *their children, from and out of your ſaid pariſh of* Orton, *to the ſaid pariſh of* Penrith, *and them to deliver to the churchwardens and overſeers of the poor there, or to ſome or one of them, together with this our order, or a true copy thereof at the ſame time ſhewing to them the original; And we do alſo hereby require you the ſaid churchwardens and overſeers of the poor of the ſaid pariſh of* Penrith, *to receive and provide for them as inhabitants of your pariſh. Given under our hands and ſeals the* ——— *day of* ——— *in the* ——— *year of the reign of his ſaid majeſty king* George *the ſecond.*

iii. *Appeal againſt the order of removal.*

Power of appealing.

1. *All perſons who think themſelves aggrieved by any ſuch judgment of the ſaid two juſtices, may appeal to the juſtices of the peace of the ſaid county, at their next quarter ſeſſions, who ſhall do them juſtice according to the merits of their cauſe.* 13 & 14 C. 2. c. 12. ſ. 2.

And by the 8 & 9 *W.* c. 30. *The appeal againſt any order of removal of any poor perſon, ſhall be had, proſecuted, and determined, at the general or quarter ſeſſions of the peace for the county, diviſion, or riding, wherein the pariſh, townſhip, or place, from whence ſuch poor perſon ſhall be removed, doth lie, and not elſewhere.* ſ. 6.

All perſons who think themſelves aggrieved] *E.* 4 *W.* *K.* and *Hartfield.* Two juſtices removed *Nicholas Wells*, from the pariſh of *Hartfield*, to the pariſh of *Frampfield*; from which order, *Wells* the party himſelf, and not the pariſh, appealed: It was objected, that the party himſelf cannot appeal, becauſe the appeal is given only to the pariſh aggrieved: But by the whole court, the party may appeal as well as the pariſh. *Carth.* 222.

T. 4 *G.* *K.* and *Almonbury.* An order of two juſtices is quaſhed at the ſeſſions upon appeal, without ſaying, *at the appeal of the party grieved.* And the court inclined to quaſh the order for this fault, till they were informed the precedents were moſt of them ſo, and for that reaſon and that only, as *Pratt* Ch. J. declared, the order was confirmed. *Str.* 96.

At the next general or quarter ſeſſions] *E.* 2 *G.* 2. *K.* and *Norton.* Exception was taken to an order of ſeſſions, for diſcharging an order of removal, becauſe the juſtices order was dated *June* 21. and the ſeſſions order was not till *Michaelmas* ſeſſions following, ſo that *Midſummer* ſeſſions intervened. To this it was anſwered, that by the expreſs words of the ſtatute the appeal is to be to the next ſeſſions after the parties find themſelves aggrieved, which is not till the removal: and for ought appears *Michaelmas* ſeſſions might be the next ſeſſions after the grievance. And ſo it was held in the caſe of *Milbrook* and *St. John's* in *Southampton*, *M.* 1 *G.* To which the court agreed, and the ſeſſions order was affirmed. *Str.* 831.

T. 11 *W.* *K.* and *Langley.* It was moved to quaſh an order of ſeſſions, becauſe the juſtices had adjourned the appeal from one ſeſſions to another, and ſo the determination upon the appeal was not at the next quarter ſeſſions. But by the court; The appeal muſt be lodged at the next quarter ſeſſions, but when it is lodged, the juſtices may adjourn it. 2 *Salk.* 605. *Comb.* 365.

H. 20 *G.* 2. *K.* and *Polſtead.* Appeal was made to the quarter ſeſſions in *Suffolk* held *April* 7. 1746. againſt an order of removal. The ſeſſions was adjourned to *April* 9. at *Woodbridge*, where for want of a ſufficient number of juſtices nothing could be done. *April* 11. a ſeſſions is held at

Ipſwich, and adjourned to the 14th at *Bury*, where the appeal was allowed. It was moved to quaſh the order of ſeſſions, as made without juriſdiction, the ſeſſions ending for want of an adjournment at *Woodbridge*. And of that opinion was the court; for the words in the 2 *H.* 5. *c.* 4. *and more often if need be*, were never conſidered as giving more than one original ſeſſions in a quarter, but only impowering adjournments. The country muſt take notice of adjournments, but are not ſuppoſed to expect a new ſeſſions till the uſual time. And the order of ſeſſions was quaſhed. *Str.* 1263.

T. 15 *G.* 2. *Roode* and *North Bradley*. A perſon was removed from *Roode* to *North Bradley*. *North Bradley* gave notice of appeal; on which, *Roode* took him back, but however got their order confirmed at ſeſſions. The next ſeſſions ſet both aſide as fraudulent. And now *Roode* inſiſted, that the order was good, as not being appealed from at the next quarter ſeſſions: And as to the other, that it was not in the power of one ſeſſions to ſet aſide the act of the other. All being now before the court, they quaſhed the firſt order, as being properly quaſhable on appeal; and would not take notice, that it was not at the next ſeſſions after ſervice of the order, which being in the caſe of a recent appeal, they would ſuppoſe to have been ſerved too late for an appeal to the next ſeſſions. And as to the order of confirmation, they quaſhed that, as not being made on any appeal, and conſequently without juriſdiction, and at the ſame time quaſhed the latter part of the ſecond ſeſſions order, which reſcinded that confirmation, as not being properly before them. *Str.* 1168.

For the county, diviſion, or riding, from whence the removal was] *E.* 13 *W. Watford* and *Wendover*. Two juſtices of *St. Albans* remove a poor perſon to *Wendover*. *Wendover* appeals to the ſeſſions at *St. Albans*, where the order was confirmed. By the court; The appeal ought to have been to the ſeſſions of the county, and not of the corporation; and as it was, it was *coram non judice*. 2 *Salk.* 490.

And in the caſe of *Malden*, *M.* 11 *An.* By Lord *Parker*, where there is a town corporate that hath ſeſſions of its own, and the juſtices within that town make an order there, if the parties will appeal, they muſt appeal to the county ſeſſions, and not to their own ſeſſions, for then there would be an appeal *ab eodem ad eundem*, there being, it may be, the ſame juſtices ſitting, who made the order. *Caſ. of S.* 10.

And by the ſtatute of the 17 *G.* 2. *c.* 38. In all corporations or franchiſes, who have not four juſtices, perſons aggrieved may appeal (if they think fit) againſt any orders of the juſtices, to the next ſeſſions of the county. *ſ.* 5.

2. *No appeal from any order of removal ſhall be proceeded upon, unleſs reaſonable notice be given by the churchwardens or overſeers of the pariſh or place appealing, unto the churchwardens or overſeers of the pariſh or place, from which the removal ſhall be; the reaſonableneſs of which notice ſhall be determined by the juſtices at the quarter ſeſſions to which the appeal is made; and if it ſhall appear to them, that reaſonable time of notice was not given, then they ſhall adjourn the appeal to the next quarter ſeſſions, and then and there finally determine the ſame.* 9 G. c. 7. ſ. 8. Notice of appeal.

Reaſonable notice] It is not expreſſed in the act, that this notice ſhall be in writing; but the court will better judge of the reaſonableneſs of it, if it ſhall be in writing: And it may be thus:

TO *the churchwardens and overſeers of the poor of the pariſh of——in the county of——.*

This is to give notice to you and every of you, that we the churchwardens and overſeers of the poor of the pariſh of—— in the county of——do intend at the next quarter ſeſſions of the peace to be holden for the ſaid county of——to commence and proſecute an appeal againſt an order of J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county of——for and concerning the removal of—— to our ſaid pariſh of——. Witneſs our hands this—— day of——.*

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overſeers of the*
G. H. } *poor.*

3. *H.* 12. *An. Malendine* and *Hunſdon.* Two juſtices by an order ſend ſome poor perſons to *Hunſdon.* Two juſtices there by an order ſend them back again. By the court; They ought to have appealed, and not ſent them back; and held the order of the firſt two juſtices to be good, becauſe there was no appeal againſt it. *Fol.* 273. Order not appealed againſt, is final.

T. 12 *W. Chalbury* and *Chipping Farringdon.* A perſon was removed by order of two juſtices from a pariſh in *Warwickſhire*, to *Chalbury* in *Oxfordſhire*, from thence by order of two juſtices to *Chipping Farringdon* in *Berkſhire:* It was objected,

objected, That *Chalbury* ought to have appealed, and got the order upon them discharged. Which *Holt* Ch. J. agreed: For sending the poor man to another place, is falsifying the first order, which cannot be done, but by appeal; for the order of two justices is a determination of the right against all persons, till it be reversed: *Chalbury* should have appealed from the *Warwickshire* order, and got that set aside, and sent the man back thither; and the justices there should have sent him to *Chipping Farringdon*. Therefore the latter order was naught. 2 *Salk.* 488.

E. 5 *G.* 2. *K.* and *Northfeatherton*. Two justices made an order, by which they removed a man, his wife, and 4 children, naming them, to *Featherton:* and there was no appeal. Afterwards, *Featherton* finds out that this woman was not the wife, for that the man, tho' married to her, was married before to another woman, and consequently the second marriage totally void. And they remove the woman by her maiden name to *Horsington*, and the four children thither also as bastards. *Horsington* appeals; and the sessions upon hearing the matter state the case specially, that this woman and the 4 children were the same with the woman and children removed by the first order, and gave jugdment that the first order was conclusive, and thereupon quashed the said second order. And by the court; They have slipped their opportunity, and the first order not appealed against is conclusive. *Sess. C. V.* 1. 154.

M. 16 *G.* 2. *Nympsfield* and *Woodchester*. In 1731, a man and his wife were removed from *Nympsfield* to *Woodchester*, and there was no appeal. They had afterwards returned to *Nympsfield*, and had there three children, who were now sent from *Nympsfield* to *Woodchester* together with the father. And upon an appeal as to the children, it was offered to give in evidence, that the man had a former wife, and consequently the children born at *Nympsfield* were as bastards settled there. The sessions refused to let *Woodchester* go into this evidence, being of opinion, that *Woodchester* was concluded by the first order unappealed from, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders: for the marriage being established by the first order, the settlement of the children (which is derivative) follows of course; and can no way be impeached, but by entring into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order unappealed from is conclusive. *Str.* 1172.

4. By

4. By the aforeſaid ſtatute of the 13 & 14 *C.* 2. it is expreſſed, that the juſtices upon the appeal, ſhall do to the parties juſtice *according to the merits of their cauſe.* Seſſions to proceed upon the merits.

And by the 5 *G.* 2. *c.* 19. *On all appeals to the ſeſſions againſt the judgments or orders of any juſtices of the peace, the juſtices there ſhall cauſe defects of form to be rectified and amended, without any coſt to the party, and after ſuch amendment ſhall proceed to hear the truth and merits of the cauſe.* ſ. 2.

5. *T.* 8 & 9 *G.* 2. *K.* and *the juſtices of Weſtmorland.* Order of two juſtices of the borough, for removing a poor family. Appeal to the ſeſſions of the county, at which only four juſtices were preſent, who were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. It was returned, that at ſuch a ſeſſions an appeal was lodged, and that four juſtices only attended, two whereof were intereſted in the queſtion, the other two were divided in opinion. It was agreed on all hands that this return was very odd, and not to be ſupported. Sir *Thomas Abney* objected, that the writ of *mandamus* was bad, and ought to be quaſhed, for that it doth not appear, that the appeal was before them; and that, for ought appears, the *mandamus* requires the juſtices to do an impoſſible thing, *viz.* to proceed on an appeal not before them, ſince the appeal being lodged at a former ſeſſions, was not continued over to the ſubſequent ſeſſions, and therefore was by law gone. Mr. *Robinſon* on the other ſide ſaid, that it was not uſual in ſuch caſes to return the continuances; but that if in fact there was no ſuch continuance, the fault was in the juſtices, who ought to have adjourned the appeal, till by the coming of more juſtices, the matter might have been determined. By *Hardwick* Ch. J. the queſtion is, whether there is a poſſibility of the juſtices proceeding in this appeal: He thought, if there was not, as there would be a failure of juſtice in this reſpect, an information ought to go againſt the juſtices who were at the ſeſſions. He ordered the caſe to ſtand over, and recommended it to Sir *Thomas Abney* to adviſe his clients to proceed on the appeal, or return the continuances; and ſeemed at length inclined, if they did not comply, to grant a peremptory *mandamus*. *Seſſ. C. V.* 2. 193. Court equally divided on the appeal.

6. *M.* 3 *An. St. Andrew's* and *St. Clements Danes.* The ſeſſions made an order, on an appeal from an order of removal, and afterwards the ſame ſeſſions vacated it by a ſubſequent order; and a certiorari being brought, both orders of ſeſſions were returned thereon. By *Holt* Ch. J. The The juſtices may alter their order during the ſame ſeſſions.

ſeſſions is all as one day, and the juſtices may alter their judgment at any time, whilſt it continues; but they ſhould not have returned the vacated order, but only the latter; for the effect of the court's ſetting aſide the firſt order is, that it ceaſeth to be an order, and conſequently ought not to be returned as an order vacated by another order, but it ſhould have been annulled and made nothing. 2 *Salk.* 494, 606.

Coſts on the appeal.

7. *And for the more effectual preventing of vexatious removals and frivolous appeals, the juſtices in ſeſſions upon any appeal concerning the ſettlement of any poor perſon, or upon any proof before them there to be made, of notice of any ſuch appeal to have been given by the proper officer to the churchwardens or overſeers of any pariſh or place (tho' they did not afterwards proſecute ſuch appeal), ſhall at the ſame ſeſſions order to the party in whoſe behalf ſuch appeal ſhall be determined, or to whom ſuch notice did appear to have been given, ſuch coſts and charges in the law, as by the ſaid juſtices in their diſcretion ſhall be thought moſt reaſonable and juſt; to be paid by the churchwardens, overſeers, or any other perſon, againſt whom ſuch appeal ſhall be determined, or by the perſon that did give ſuch notice; and if the perſon ordered to pay ſuch coſts, ſhall live out of the juriſdiction of the ſaid court, any juſtice where ſuch perſon ſhall inhabit, ſhall on requeſt to him made, and a true copy of the order for the payment of ſuch coſts produced, and proved by ſome credible witneſs on oath, by his warrant cauſe the ſame to be levied by diſtreſs; and if no ſuch diſtreſs can be had, ſhall commit ſuch perſon to the common gaol, there to remain by the ſpace of* 20 *days.* 8 & 9 W. c. 30. ſ. 3.

M. 5 *G.* 2. *K.* and *the county of Nottingham.* A *mandamus* was granted for the juſtices to give coſts to the party in whoſe favour the appeal had been determined; yet upon their return of it, the court held it reaſonable for them to have the power of judging whether coſts ſhall be allowed or not, and thereupon quaſhed the writ of *mandamus.* *Nelſ. Poor.*

Maintenance to be reimburſed.

8. *For the preventing of vexatious removals, if the juſtices ſhall at their quarter ſeſſions, upon an appeal before them there had, concerning the ſettlement of any poor perſon, determine in favour of the appellant, that ſuch poor perſon was unduly removed, they ſhall at the ſame quarter ſeſſions, order and award to ſuch appellant, ſo much money, as ſhall appear to the ſaid juſtices to have been reaſonably paid by the pariſh or other place on whoſe behalf ſuch appeal was made, towards the relief of ſuch poor perſon, between the time of ſuch undue removal, and the determination of ſuch appeal; the ſaid money ſo awarded, to be recovered in the ſame manner as coſts and charges upon an*

appeal

appeal are to be recovered by the ſtatute of the 8 & 9 W. 9 G. c. 7. ſ. 9.

E. 3 *G.* 2. *St. Mary's Nottingham* and *Kirklington.* Motion for a *mandamus* to the juſtices of the town and county of *Nottingham*, commanding them to allow the pariſh of *Kirklington*, the expence and charges their officers had been put to, in keeping a poor perſon from the time of his removal, till the order was diſcharged by the ſeſſions upon appeal. And a *mandamus* was granted. *Seſſ. C. V.* 2. 67.

9. *M.* 13 *W. Mynton* and *Stony Stratford.* By *Holt* Ch. J. and the court; If on appeal to the ſeſſions an order be diſcharged, that judgment binds only between the parties: But when upon appeal an order is confirmed, that is concluſive to all perſons as well as to the parties; for it is an adjudication that this is the place of the party's laſt legal ſettlement. 2 *Salk.* 527. Order confirmed upon the appeal, is final.

M. 10 *W. Harrow* and *Riſelip.* A perſon comes into *Harrow*, and being likely to become chargeable, was removed to *Riſelip. Riſelip* appealed; and upon the appeal he was adjudged to be ſettled at *Riſelip.* Afterwards *Riſelip* diſcovered, that *Hendon* was the place of his laſt legal ſettlement, and ſent him thither; and the queſtion was, Whether after the adjudication upon the appeal, *Riſelip* was not eſtopped againſt all the world, to ſay, that *Riſelip* was not the place of his laſt legal ſettlement. By *Holt* Ch. J. *Riſelip* is eſtopped to ſay otherwiſe; for if *Riſelip* had not been the very place of his laſt legal ſettlement, the juſtices muſt have ſent him back to *Harrow*, who were firſt poſſeſſed of him, for that reaſon, becauſe they were poſſeſſed of him, and he did not belong to *Riſelip.* And now this is in effect the ſame queſtion again, namely, whether he belongs to *Riſelip?* Which queſtion has been already determined by the juſtices on the appeal, who have adjudged that he was laſt ſettled at *Riſelip.* Now this point being determined, the appeal muſt be final and concluſive, otherwiſe there would be no end of things. 2 *Salk.* 524. 3 *Salk.* 261.

M. 6 *G. Little Bitham* and *Somerby.* A perſon is ſent by order of two juſtices to *Somerby*, as the place of his laſt legal ſettlement. *Somerby* appeals, and the order is confirmed. Soon after, without ſtating that he had gained any new ſettlement, *Somerby* ſends him to a third place. By the court, An order of reverſal is final only between the two pariſhes; but if it be confirmed, it is final as to all the world: and therefore no new ſettlement appearing, the order of removal from *Somerby* muſt be quaſhed. *Str.* 232.

Order quaſhed on the merits, concluſive only between the parties.

10. *H.* 10 *W. St. Michael's Bedingham* and *Kingſton Bowſey.* Order reverſed on the appeal is concluſive only as to the pariſh acquitted; but the firſt pariſh may remove again to any pariſh not party to the former removal. 2 *Salk.* 486.

T. 9 *G. Foſton* and *Carlton.* Two juſtices ſend a poor perſon from *Foſton* to *Carlton.* On appeal the order is quaſhed; and at three months end, two juſtices, without ſhewing any new ſettlement ſince the laſt order, make a new order to remove him from *Foſton* to *Carlton* a ſecond time. But by the court, The laſt order muſt be quaſhed: The caſe of *Barrow* and *Ingoldſby*, *E.* 11 *An.* was at the diſtance of nine months, but the court quaſhed it, becauſe there could be no inconvenience in putting them to ſhew a new ſettlement. *Str.* 567.

E. 19 *G.* 2. *Oſgathorpe* and *Diſerth.* A perſon was removed by order of two juſtices from *Diſerth* to *Oſgathorpe*; which order on appeal was diſcharged. He was by a ſecond order ſent from *Diſerth* to *Oſgathorpe* as a certificate man; and upon an appeal it was ſtated, that the firſt removal was *before* he became chargeable, and the ſecond *after* he became ſo: and the ſeſſions were of opinion, that the firſt determination was not final between the pariſhes, and therefore confirmed the ſecond order of removal. It was moved to quaſh theſe two laſt orders, on the authority of thoſe caſes wherein it hath been determined, that a reverſal is final between the parties. But by the court, So it would be, if the ſpecial matter did not appear: a certificated perſon cannot be ſent back, until he is actually a charge: a removal before is premature: The conſequence of which only is, that he muſt be ſuffered to remain till he doth become chargeable; but not to make a premature removal final for ever. The laſt orders muſt be confirmed. *Str.* 1256.

Order quaſhed for form, not concluſive between the parties.

11. An order of two juſtices, if quaſhed at the ſeſſions upon an appeal, for want of form only, is not concluſive between the two pariſhes. *Foley* 276.

Superintendency of the court of king's bench.

12. It was moved for ſetting aſide an order of ſeſſions confirming an order of two juſtices upon appeal. But the court would hear nothing of the merits of the cauſe, the order of ſeſſions being in that caſe final, unleſs there had been error in form. 1 *Ventr.* 310.

M. 9 *An. South Cadbury* and *Braddon.* On appeal to the ſeſſions, the court diſcharged the firſt order. It was moved to ſet aſide the order of diſcharge, becauſe the juſtices do not ſay, whether they diſcharge it for form, or on the merits; for if it was for form, the pariſh is not bound, but if on

the

the merits, the parish in consequence is hereby discharged for ever. But by the court; The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record. Particularly,

If the sessions reverse the first order, and that being removed appears to be good, this court will intend it was reversed on the merits, and affirm the order of sessions.

If the sessions reverse the first order, and that being removed appears not to be good, we must intend it was reversed for form, and affirm the order of reversal.

But if the sessions affirm the first order, and that appears to be good, we must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court will reverse it, because it appears naught. 2 *Salk.* 607.

So that the case is this: If the sessions by their order do barely affirm or quash the order of the two justices, and both the said orders are removed into the king's bench, the court hath nothing properly before them to judge upon, but the validity of the first order of the two justices. And if that order appears *good as to form*, and is *confirmed* by the sessions, the court will intend it was confirmed upon the merits; If it is *good as to form*, and *quashed* by the sessions, the court will intend it was quashed upon the merits; If it is *bad as to form*, and is *confirmed* by the sessions, the court will quash the confirmation, because it appears to be erroneous; If it is *bad as to form*, and is *quashed* by the sessions, the court will intend it was quashed for form.

But if the sessions, by their order, do not barely affirm or quash the order of the two justices, but do set forth the reasons of their said order, and state the case specially thereupon; then the court will judge upon the case so stated by the sessions; that is to say, they will judge of the law as it arises upon those facts stated, but not of the facts themselves, for those they will suppose to have appeared sufficiently to the justices upon the evidence. And this is the method, when the justices are doubtful in point of law, whereby to obtain the opinion of that court, namely, in their order of sessions which confirms or quashes the order of the two justices, to state the case specially; and then the party which is not satisfied, by procuring the same to be removed into the king's bench by certiorari, may have it determined there by the judgment of that court, who will quash or confirm the order of sessions as they see cause.

IV. Of

IV. Of the poor rate, and other helps towards their relief.

i. Of the poor rate.
ii. Taxing others in aid.
iii. How far parents and children are liable to maintain each other.

i. Of the poor rate.

Making a rate.

1. *The churchwardens and overſeers of every pariſh, or the greater part of them, ſhall raiſe weekly or otherwiſe (by taxation of every inhabitant, parſon, vicar, and other, and of every occupier of lands, houſes, tithes impropriate, propriations of tithes, coal mines, or ſaleable underwoods in the ſaid pariſh) a convenient ſtock of flax, hemp, wool, thread, iron, and other ware and ſtuff, to ſet the poor on work; and alſo competent ſums for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor as are not able to work, and alſo for the putting out poor children apprentices.* 43 El. c. 2. ſ. 1.

The churchwardens and overſeers] *H.* 2 *An. Tawney*'s caſe. The concurrence of the inhabitants in making a rate, is not at all neceſſary; for by theſe words the churchwardens and overſeers may make one without them. L. *Raym.* 1013. 2 *Salk.* 531.

Shall raiſe weekly or otherwiſe by taxation] *T.* 19 *G.* 2. *K.* and the churchwardens of *Weobly*. The court refuſed to grant a *mandamus*, directing to inſert particular perſons in the poor rate, upon affidavits of their ſufficiency, and being left out to prevent their having votes for parliament men; for that the remedy was by appeal, and this court never went further, than to oblige the making a rate, without medling with the queſtion, who is to be put in or left out; of which the pariſh officers are the proper judges, ſubject to an appeal. *Str.* 1259.

By taxation] By this ſtatute the taxation ought to be equal; and therefore ought to be continually altered as circumſtances alter. 2 *Salk.* 526.

M. 12 *W. K.* and *Audly*. A rate was agreed on in 1665, by the inhabitants of *Audly*, which had been followed ever ſince till the laſt year, when a new rate was made.

On

On appeal to the ſeſſions, the new rate was quaſhed, and the old one ordered to ſtand. By *Holt* Ch. J. The old rate, however juſt at firſt, may be unequal now, and therefore the juſtices cannot make a ſtanding rate, for lands may be improved. 2 *Salk.* 526.

H. 2 *G. K.* and *Clerkenwell.* An order was quaſhed, which was made to confirm a poor rate, which rate was made according to the land tax: Objected, that this taxation was not equal, becauſe the perſonal eſtate in the publick funds is not chargeable to the land tax, but it is to the poor: And by the whole court this rate for that reaſon was ſet aſide. *Fol.* 12.

The form of which rate or taxation may be thus:

AN *aſſeſſment for the neceſſary relief of the poor, and for the other purpoſes in the ſeveral acts of parliament mentioned relating to the poor, for the pariſh of* ——— *in the county of* ——— *made and aſſeſſed the* ——— *day of* ——— *being the firſt rate at* 6d. *in the pound for the preſent year* ———

				l.	*s.*	*d.*
A. B.	——	——	——	0	3	0
C. D.	——	——	——	0	0	9
E. F.	——	——	——	0	2	6

And ſo forth.

Aſſeſſors, A. B. } Churchwar-
C. D. } dens.
E. F. } Overſeers of
G. H. } the poor.

Of every inhabitant] Where perſons ſhall come into, or occupy any premiſſes, out of which any other perſon aſſeſſed ſhall be removed, or which at the time of making ſuch rate was unoccupied, then every perſon ſo removing from, or coming into, or occupying the ſame, ſhall be liable to pay ſuch rate, in proportion to the time that ſuch perſon occupied the ſame reſpectively, under the like penalty of diſtreſs, as if ſuch perſon ſo removing had not removed, or the perſon coming in or occupying had been originally aſſeſſed in ſuch rate; which proportion, in caſe of diſpute, ſhall be aſcertained by two juſtices. 17 *G.* 2. *c.* 38. *ſ.* 12.

Of every inhabitant, parſon, vicar, and other] Under theſe words ſeems to be included the taxation of perſonal eſtates; and real eſtates are charged by the words next after.

And when goods or perſonal eſtate are rated, it ought to be done in the ſame proportion as lands are taxed, namely, every 100 *l.* at the rate of 5 *l.* a year. *Read. Poor.*

Every inhabitant—and every occupier of lands, &c.] A perſon who hath lands in his occupation, and a ſtock of goods and wares beſides, as a draper, grocer, and the like, may be taxed for both, but not for ſuch ſtock or goods with which he uſes to manure his lands. *Read. Poor.* L. *Raym.* 1280.

Occupier] The farmer or occupier ſhall pay this tax, and not the landlord, who is never to be taxed for his rent; for then the landlord would pay twice: but if he be poſſeſſed of a ſum of money, or other perſonal eſtate, he may be taxed for that. L. *Raym.* 1280. *Dalt.* 165.

Of lands] *E.* 1 *An.* By *Holt* Ch. J. Hoſpital lands are chargeable to the poor, as well as others; for no man, by appropriating his lands to an hoſpital, can diſcharge or exempt them from taxes to which they were ſubject before, and throw a greater burthen upon his neighbours. 2 *Salk.* 527.

Tithes] *H.* 4 *G. K.* and *Turner.* The defendant being aſſeſſed towards the poor rate for his tithes as vicar, appealed to the ſeſſions, where he is abſolutely diſcharged. But by the court, As vicar he is chargeable by the 43 *El.* and the ſeſſions hath only power to moderate, but not diſcharge. And the order of ſeſſions was quaſhed. *Str.* 77.

T. 8 *G. K.* and the inhabitants of *Lambeth.* The parſon lets his tithes to farm; and the farmer agrees with the tenant of the land, that in conſideration of his paying ſo much, he ſhall retain the tithe, and gather in the whole crop without dividing: and which of the two is chargeable to the poor rate, as occupier of the tithes, was the queſtion. And the ſeſſions diſcharge the leſſee of the parſon, and tax the tenant of the land. But by the court, The order muſt be quaſhed. The farmer of the tithes is *prima facie* liable to the poor rate, and therefore unleſs he can throw that charge over upon another, the tax muſt be made upon him. The tenant of the land in this caſe can never be ſaid to be the occupier of the tithes; for he is either a perſon who buys the tithes, or elſe he is to be taken as only excuſed from paying any; and no body can ſay, but that though the parſon thinks fit to excuſe a pariſhioner, he will ſtill remain in point of law the occupier of the tithes. This agreement being only by parol, cannot enure as an under leaſe of a thing that lies only in grant.

Suppoſe it was the caſe of underwoods, which are ſold ſtanding, and the vendee grubs them up; can it be imagined, that makes him the occupier; or ſuppoſe the tenant ſells the whole crop ſtanding, will that make him leſs the occupier of the land? If it ſhould, it would be impoſſible for the officers of the pariſh to know whom to charge. We muſt take this tenant of the land to be like any other buyer of the tithes, ſince he has no more title to them than any ſtranger whatſoever; and when the parſon or his farmer receives a ſum of money in lieu of tithe, that is in law a receipt of the tithe; with this only difference, that it is not tithe in kind. In the caſe of a compoſition (as this is) or a *modus*, it was never thought but that the parſon was chargeable as occupier of the tithe: therefore there being no colour to charge the tenant of the land, the order of ſeſſions muſt be quaſhed. *Str.* 525.

Coal mines or ſaleable underwoods] That is, proportioning them to an annual benefit. *Dalt.* 165.

In the ſaid pariſh] A man having lands in other pariſhes than where he lives, the ſame being in leaſe, or not in leaſe, he is to be taxed in the pariſh where he lives, according to his viſible eſtate there, and not for his lands or rent in another pariſh. *Dalt.* 165.

And by the 17 *G.* 2. *c.* 37. Where there ſhall be any diſpute in what pariſh or place, improved waſtes, and drained and improved marſh lands lie, and ought to be rated; the occupiers of ſuch lands, or houſes built thereon, tithes ariſing therefrom, mines therein, and ſaleable underwoods, ſhall be rated to the relief of the poor, and to all other pariſh rates, within ſuch pariſh and place which lies neareſt to ſuch lands; and if on application to the officers of ſuch pariſh or place, any diſpute ſhall ariſe, the juſtices at the next ſeſſions after ſuch application made, and after notice given to the officers of the ſeveral pariſhes and places adjoining to ſuch lands, and to all others intereſted therein, may hear and determine the ſame on the appeal of any perſon intereſted, and may cauſe the ſame to be equally aſſeſſed, whoſe determination therein ſhall be final. But this ſhall not determine the boundaries of any pariſh or place, other than for the purpoſe of rating ſuch lands to the relief of the poor, and other parochial rates. *ſ.* 1, 2.

Allowance of the rate by the juſtices.

2. By the aforeſaid ſtatute of the 43 *El.* the ſaid rate and taxation ſhall be made, *with the conſent of two juſtices, one whereof is of the* quorum, *dwelling in or near the pariſh or diviſion.* ſ. 1.

And

And this conſent is uſually given, by the juſtices ſigning the ſame, with their allowance thereupon, thus:

WE two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the quorum, do conſent unto and allow of this aſſeſſment: Witneſs our hands the —— day of ——

J. P.
K. P.

But this conſent is to be underſtood of two juſtices out of ſeſſions; for the ſeſſions have no original power to order an aſſeſſment to be made, but only if it come before them by way of appeal: for in ſuch caſe the party would be deprived of the benefit of appealing. L. *Raym.* 798.

M. 7 *G. K.* and the juſtices of *Dorcheſter.* A *mandamus* iſſued to the juſtices to ſign a poor rate made by the churchwardens and overſeers. Before the return a motion was made to ſuperſede it, for ſeveral objections to the fairneſs of the rate; and that this would be ſpeedier and better for the poor, than to reſerve the debate of them for a formal return. But by the court, The two juſtices are neceſſary to ſign the rate only by way of form; for it is the churchwardens and overſeers that have the power of making it; and whether it be a fair rate or not, is proper for the juriſdiction of the ſeſſions, and was never intended for our examination. The *ſuperſedeas* being denied, the juſtices returned, that they could not allow the rate, it not being a juſt and proper rate: and the court having before given their opinion of this upon the motion, they reſented this uſage ſo far, that they quaſhed the return, and ordered an attachment againſt the juſtices, who thereupon ſubmitted, and returned that they had allowed the rate. *Str.* 393.

Rate to be publiſhed.

3. *The churchwardens and overſeers ſhall cauſe publick notice to be given in the church, of every rate for relief of the poor, allowed by the juſtices, the next* ſunday *after ſuch allowance; and no rate ſhall be reputed ſufficient to be collected, till after ſuch notice given.* 17 G. 2. c. 3. ſ. 1.

Any perſon may inſpect the ſame.

4. *And they ſhall permit any inhabitant to inſpect ſuch rate at all ſeaſonable times, paying* 1 s. *and ſhall give copies on demand, being paid* 6 d. *for every* 24 *names.* 17 G. 2. c. 3. ſ. 2.

And if any churchwarden or overſeer ſhall not permit any inhabitant to inſpect, or refuſe to give copies as aforeſaid, he ſhall forfeit 20 l. *to the party grieved.* ſ. 3.

5. *If*

5. *If any perſon ſhall be aggrieved by any aſſeſſment, or ſhall have any material objection to any perſon's being put in, or left out of ſuch aſſeſſment, or to the ſum charged on any perſon or perſons therein; he may, giving reaſonable notice to the churchwardens or overſeers, appeal to the next ſeſſions; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next ſeſſions after.* 17 G. 2. c. 38. ſ. 4. Appeal againſt the rate.

And *on all appeals from rates, the juſtices ſhall amend the ſame, in ſuch manner only as ſhall be neceſſary for giving relief, without altering ſuch rates, with reſpect to other perſons mentioned in the ſame; but if upon an appeal from the whole rate, it ſhall be found neceſſary to ſet aſide the ſame, then they ſhall order a new rate to be made.* id. ſ. 6.

And the court may award coſts to either party, as in caſes of ſettlements by the 8 & 9 *W. id. ſ.* 4.

6. *True copies of the rates ſhall be entred in a book, by the churchwardens and overſeers, within* 14 *days after all appeals from ſuch rates are determined; and they ſhall atteſt the ſame, by putting their names thereto; and all ſuch books ſhall be kept by the churchwardens and overſeers for the time being, whereto all perſons liable to be aſſeſſed may freely reſort, and ſhall be delivered over from time to time, to the new churchwardens and overſeers, as ſoon as they enter into their offices, to be preſerved and produced at the ſeſſions when any appeal is to be heard.* 17 G. 2. c. 38. ſ. 13. After appeal, rates to be entred in a book.

7. *It ſhall be lawful as well for the preſent as ſubſequent churchwardens and overſeers, or any of them, by warrant from any two ſuch juſtices, one whereof is of the quorum, to levy the ſaid ſums, and all arrearages, of every one that ſhall refuſe to contribute according as they ſhall be aſſeſſed, by diſtreſs and ſale:* 43 El. c. 2. ſ. 4. Rate to be levied by diſtreſs.

And by the 17 *G.* 2. *c.* 38. *The goods of any perſon aſſeſſed, and refuſing to pay, may be levied by warrant of diſtreſs, in any part of the county; and if ſufficient diſtreſs cannot be found within the county, on oath made thereof before a juſtice of any other county (which oath ſhall be certified in the warrant) the goods may be levied in ſuch other county or precinct, by virtue of ſuch warrant and certificate; and if any perſon ſhall be aggrieved by ſuch diſtreſs, he may appeal to the next ſeſſions for the county or precinct where the aſſeſſment was made.* ſ. 7.

But by *Holt* Ch. J. in the caſe of *Tracy* and *Talbot*, T. 3 *An.* The rate cannot be diſtrained for by virtue of a general warrant made before the rate; but there ought to be a ſpecial warrant on purpoſe. 2 *Salk.* 532. That is to ſay, the non-feaſance of the party ſhall not be left to the judgment of the officer, who may out of private reſent-

ment ſell his neighbour's goods without ſufficient cauſe; but oath of the refuſal muſt be made before the juſtices. And it is reaſonable that the party ſhall be heard in his defence; for he may ſhew cauſe variouſly why a diſtreſs ſhould not be granted; as, that the rate was not regularly allowed, or was not publiſhed in the church, or that he had given notice of appeal, or that no demand or refuſal had been made, and the like.

The form of the ſummons in which caſe may be this:

Weſtmorland. { To A. O. of the pariſh of ——— in the ſaid county, yeoman.

WE *whoſe names are hereunto ſet and ſeals affixed, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the quorum, do hereby ſummon you perſonally to appear before us at the houſe of* ——— *in* ——— *in the ſaid county, on* ——— *the* ——— *day of* ——— *at the hour of* ——— *in the forenoon of the ſame day, to ſhew cauſe why you refuſe to pay the rate or aſſeſſment made for the relief of the poor of the ſaid pariſh for this preſent year; otherwiſe we ſhall proceed as if you had appeared. Given under our hands and ſeals the* ——— *day of* ——— *in the year of our lord* ———

And then the warrant of diſtreſs thereupon may be thus:

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS *in and by a rate and aſſeſſment made, aſſeſſed, allowed, and publiſhed, according to the ſtatutes in that caſe made and provided,* A. O. *an inhabitant and occupier of an houſe in the ſaid pariſh of* ——— *was duly rated and aſſeſſed for and towards the neceſſary relief of the poor of the ſaid pariſh for this preſent year the ſum of* 3s. *And whereas it duly appeareth unto us, two of his majeſty's juſtices of the peace in and for the ſaid county, one whereof is of the quorum, as well upon the oath of* O. P. *overſeer of the poor of the ſaid pariſh, as otherwiſe, that the ſaid ſum of* 3s. *hath been lawfully demanded of the ſaid* A. O. *and that the ſaid* A. O. *hath refuſed and doth refuſe to pay the ſame; And whereas the ſaid* A. O. *having appeared before us in purſuance of our ſummons for that purpoſe, hath not ſhewed to us any ſufficient cauſe why the ſame ſhould not be paid:* [Or, *And*

whereas it hath been duly proved to us upon oath, that the ſaid A. O. *hath been duly ſummoned to appear before us the ſaid juſtices, to ſhew cauſe why the ſame ſhould not be paid, but he the ſaid* A. O. *hath neglected to appear according to ſuch ſummons:] Theſe are therefore to require you forthwith to make diſtreſs of the goods and chattels of him the ſaid* A. O. *And if within the ſpace of [four] days next after ſuch diſtreſs by you taken, the ſaid ſum, together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale, that you detain the ſaid ſum of ———and alſo your reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs; rendring to him the ſaid* A. O. *the overplus on demand. And if no ſuch diſtreſs can be made, that then you certify the ſame unto us, to the end that ſuch further proceedings may be had therein, as to law doth appertain. Given under our hands and ſeals this———day of———.*

And where any diſtreſs ſhall be made, for money juſtly due for relief of the poor, the diſtreſs it ſelf ſhall not be deemed unlawful, nor the parties making it be deemed treſpaſſers, for any defect or want of form in the warrant for the appointment of overſeers, or in the rate, or in the warrant of diſtreſs thereupon; nor ſhall the parties diſtraining be deemed treſpaſſers *ab initio*, on account of any irregularity, which ſhall be afterwards done by the parties diſtraining; but the party aggrieved by ſuch irregularity, may recover full ſatisfaction for the ſpecial damage, and no more, in an action of treſpaſs, or on the caſe. But where the plaintiff ſhall recover in ſuch action, he ſhall be paid his full coſts. But no plaintiff ſhall recover in any action, for any ſuch irregularity, if tender of amends hath been made by the party diſtraining, before ſuch action brought. 17 *G.* 2. *c.* 38. *ſ.* 8, 9, 10.

Commitment for want of diſtreſs.

8. *In defect of ſuch diſtreſs, it ſhall be lawful for two ſuch juſtices, to commit ſuch perſon to the common gaol, there to remain without bail or mainprize, until payment of the ſame.* 43 El. c. 2. ſ. 4.

Arrears to be levied by the ſucceeding overſeers.

9. *And if any perſon ſhall neglect to pay to ſuch overſeers, the ſucceeding overſeers ſhall levy the arrears, and ſhall reimburſe their predeceſſors the ſums which are allowed to be due to them in their accounts.* 17 G. 2. c. 38. ſ. 11.

Certiorari.

10. *E.* 5 *G.* 2. *K.* and *Uttoxeter.* Upon great debate, and ſearch of precedents, it was held, that a certiorari would not lie to remove the poor rate it ſelf, the remedy being to appeal, or by action when a diſtreſs is taken, which will anſwer all the ends of juſtice in coming at an

equal rate; whereas if the rate it ſelf ſhould be required to be ſent up, great inconveniences and delays would follow. *Str.* 932. *Caſes of S.* 317.

E. 7 *G.* 2. *K.* and juſtices of *Salop.* The true objection againſt a certiorari is, that if rates were removable, the poor might be ſtarved whilſt the rates were depending; and therefore the court, from the great inconvenience that would attend the removal of rates, have refuſed to do it. *Seſſ. C. V.* 1. 201. *Str.* 975.

ii. Taxing others in aid.

Hundred contributory.

1. *If the ſaid juſtices do perceive, that the inhabitants of any pariſh are not able to levy among themſelves ſufficient ſums for the purpoſes aforeſaid, then the ſaid two juſtices* (1 Q.) *ſhall tax, rate, and aſſeſs as aforeſaid any other of other pariſhes, or out of any pariſh within the hundred, to pay ſuch ſums to the churchwardens and overſeers of the ſaid poor pariſh, for the ſaid purpoſes, as the ſaid juſtices ſhall think fit.* 43 El. c. 2. ſ. 3.

That the inhabitants of any pariſh are not able] *H.* 8 *An.* Order of two juſtices: The caſe was thus; There were two vills in one pariſh, and the juſtices recite in their order, that one of the vills was very rich, and the other very poor; and further, that the vill which was rich, did not pay half ſo much to the poor, as the poor vill did. Objected, 1. One vill ought not to contribute to another, becauſe the ſtatute mentions pariſhes only. 2. The reaſon given for charging the rich vill to contribute to the poor vill is uncertain; *viz.* becauſe they do not pay half ſo much as the poor vill does, without ſhewing that either vill pays any thing to the poor. By the court; As to the firſt objection, ſurely this will come within the equity of the ſtatute, tho' the ſtatute only makes mention of *pariſhes*; and it is highly reaſonable, that one vill ſhould contribute to another in the ſame pariſh. But this order muſt be quaſhed on the ſecond objection, for the uncertainty. *Foley* 25.

Then the ſaid two juſtices] *T.* 2 *J.* 2. *K.* and *Grieſly*, The *ſeſſions* rated the adjacent pariſhes: Quaſhed; becauſe the ſtatute appoints it to be done by the two juſtices, and hereby they prevent an appeal. *Caſes of S.* 259.

The ſaid two juſtices ſhall tax, rate, and aſſeſs] *T.* 12 *G.* 2. *St. Mary*'s and *St. Peter and Paul*'s in *Marlborough.* Two juſtices order the churchwardens and overſeers of *St. Peter*

Peter and Paul's to aſſeſs, raiſe, and levy a ſum towards the maintenance of the poor of *St. Mary's*. But the order was quaſhed by the court; becauſe the juſtices had delegated their power to the churchwardens and overſeers, whereas by the ſtatute they themſelves are to make the rate on all, or on particular perſons. *Str.* 1114.

Any other of other pariſhes] *M.* 32 *C.* 2. Reſolved, that the juſtices may impoſe the charge upon any of the inhabitants of the neighbouring pariſhes, and are not obliged to put a general tax upon the whole pariſh. *Comb.* 309. 1 *Ventr.* 350.

T. 12 *G. K.* and *Boroughſen.* There was a taxation of ſeveral perſons in a pariſh; Objected, that it ſhould be of all the perſons in a particular place or pariſh. The court thought it unreaſonable, that ſeveral perſons in a pariſh ſhould be charged, and not all, but that the words of the act are very ſtrong; and did not quaſh the order for this objection. *Foley* 29.

Within the hundred] *T.* 9 *An. Boroughſen* and *St. John's.* Motion to quaſh an order of two juſtices; for that it doth not appear upon the order, that the pariſh which is charged to aid the pariſh that is not able to maintain its own poor, is within the ſame hundred. And quaſhed by the whole court. *Foley* 27.

H. 8 *An.* Motion to quaſh an order of two juſtices, which was made to aſſeſs the pariſhes of *St. Stephen* and *St. Mary Magdalen* in *Norwich*, in aid of the pariſh of *St. Benedict*, which was not able to maintain its own poor. Objection, Theſe pariſhes are not in the ſame hundred; it is in *Norwich*, where there is no hundred, ſo the juſtices have no juriſdiction. And by *Holt* Ch. J. the order muſt be quaſhed. *Foley* 31.

As the ſaid juſtices ſhall think fit] *E.* 12 *G. K.* and *St. Mary's* in *Marlborough.* An order was made for a neighbouring pariſh to contribute, *ſo long as we the ſaid juſtices ſhall think fit.* But by the court, It muſt be quaſhed; for the diſcretion that is left in the juſtices, is as to the *quantum*, and not as to the duration of the contribution. *Str.* 700.

M. 6 *W. K.* and *Knightly.* A ſum in groſs was taxed upon a neighbouring pariſh, for a whole year; which was objected to as unreaſonable, becauſe their ability may change: nevertheleſs the order was confirmed. *Comb.* 309.

T. 6 *G. K.* and *Telſcombe.* By the court, The order for the contributory pariſh to make a rate at 6*d.* in the pound

is ill for incertainty: it ſhould have been, to raiſe ſuch a ſum certain. Quaſhed. *Str.* 314.

T. 12 *G.* 2. Caſe of the pariſh of *St. Peter and Paul* in *Marlborough*. Two juſtices, reciting the inability of the pariſh of *St. Mary* to maintain its own poor, order the pariſh of *St. Peter and Paul* to contribute 60 *l.* for the maintenance of the poor of the other pariſh. And objection being made to their ordering ſuch a groſs ſum, the court held it in that reſpect to be well. *Str.* 1114.

County contributory.

2. *And if the ſaid hundred ſhall not be thought by the ſaid juſtices able and fit to relieve the ſaid ſeveral pariſhes not able to provide for themſelves, as aforeſaid, then the juſtices at their general quarter ſeſſions ſhall rate and aſſeſs as aforeſaid, any other of other pariſhes, or out of any pariſh within the county.* 43 El. c. 2. ſ. 3.

T. 3 *G. K.* and *Percivall.* Order of ſeſſions, reciting that the pariſh is not able to maintain its own poor, nor any other pariſh within the hundred to contribute, therefore the juſtices at the ſeſſions tax other pariſhes in another hundred within the ſame county. It was moved to quaſh it, and inſiſted that the ſtatute gives no authority to the ſeſſions to charge people out of the hundred, till two juſtices have inquired whether any pariſh in the hundred can contribute: The firſt application to be to two juſtices, and the ſecond to the ſeſſions. *Parker* Ch. J. I do not ſee, to what purpoſe it would be, for the two juſtices to make an order, only to adjudge that no pariſh within the hundred is able to contribute. We will preſume the ſeſſions is ſatisfied of that, and if the two juſtices ſhould make ſuch an adjudication, yet the ſeſſions muſt inquire into the truth of it; and if no order appears, which charges any pariſh within the hundred, it is a ſufficient ground for the ſeſſions to act. If the two juſtices had charged any pariſh within the hundred, that would ha ſtopped the ſeſſions from proceeding; and the ſufficiency o hundred depends on this, whether two juſtices have ever charged the hundred. —— *If the ſaid hundred ſhall not be thought by the ſaid juſtices able,* —— that is, if the two juſtices do not adjudge it ſo. If two juſtices ſhould adjudge the hundred not able, yet if other two juſtices adjudge the contrary, their charge would be good, and the ſeſſions be ouſted of their juriſdiction, notwithſtanding the firſt adjudication. *Eyre* J. Here are two juriſdictions, that of the two juſtices, and that of the ſeſſions, and both are original juriſdictions. They are different in all reſpects, for the two juſtices have no power out of the hundred, nor the ſeſſions within

within it. There need be no appeal from an adjudication of two juſtices, for that would be to appeal from a nullity. And the order was confirmed. *Str.* 56.

iii. How far parents and children are liable to maintain each other.

Parents and children mutually liable.

1. *The father and grandfather, mother and grandmother, and children of every poor, old, blind, lame, and impotent perſon, or other poor perſon not able to work, being of a ſufficient ability, ſhall at their own charges, relieve and maintain every ſuch poor perſon, in that manner, and according to that rate, as by the juſtices of that county where ſuch ſufficient perſons dwell in their ſeſſions ſhall be aſſeſſed; on pain of* 20 s. *a month.* 43 El. c. 2. ſ. 7.

Which penalty ſhall go to the uſe of the poor of the ſame pariſh, and be levied by ſome or one of the churchwardens or overſeers, by warrant from two ſuch juſtices (1 Q.) *by diſtreſs; or in defect thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain without bail or mainpriſe, till the ſaid forfeitures ſhall be paid.* ſ. 2, 11.

Father and mother] *T.* 9 *An. Q.* and *Clentham.* It was moved to quaſh an order upon the father in law, to maintain his wife's daughter, his wife being dead. By the whole court; The huſband ought to provide for the daughter in law during the wife's life, in the right of his wife; but when the wife dies, the relation is diſſolved, and he is not by any means obliged to provide for the daughter in law after her mother's death. *Foley* 39.

E. 10 *An. Q.* and *St. Botolph's Aldgate.* The ſingle queſtion was, Whether the huſband ſhall be chargeable to maintain his wife's children by a former huſband: And it was reſolved, he was, during the wife's life, in her right; but not after. *Foley* 42.

There was an order upon the mother, who was married to a ſecond huſband, to maintain her children which ſhe had by the former huſband: But by the court, a feme covert cannot be charged, but they ought to have charged her huſband. *Foley* 44.

M. 7 *G.* 2. *K.* and *Dempſon.* Order upon the father to maintain the ſon's wife, after a divorce *a menſa & thoro* for adultery, was quaſhed on the authority of *K.* and *Munden* (hereafter following), ſhe not being a natural relation of the father. *Str.* 955.

Grandfather and grandmother] *M.* 7 *C. K.* and *Reeve.* The *reputed* grandfather or grandmother are not within the ſtatute; for a baſtard is *filius populi.* 2 *Bulſtr.* 344.

H. 7 *C. Gerard*'s caſe. The queſtion was, Whether a grandfather is bound to maintain his grandchild in law, having no portion with his grandmother. *Whitlock* and *Croke* juſtices, both did agree, if he had a portion with the grandmother, he ought to maintain her grandchild during her life; but in this caſe it appeared that the grandfather and grandmother had lived together 19 years, and tho' he had nothing with her, yet now by the wife's induſtry, they were of ability. *Whitlock* thought, that he ought to provide for the grandchild during the grandmother's life; and *Croke* that he ought not. 2 *Bulſtr.* 346.

And children] *T.* 5 *G. K.* and *Munden.* Order, reciting that *Munden* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt* Ch. J. The caſes which have hitherto been, were either where the judges were divided, or the matter came not directly in queſtion, or was only a caſe at a judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on conſideration we are all of opinion, that the ſon-in-law is not bound, either within the words or intent of the ſtatute, which provides only for natural parents. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to inforce that law of nature, it was found neceſſary to eſtabliſh it by act of parliament, and that can be extended no farther than the law of nature went before, and the law of nature doth not reach to this caſe. And the order muſt be quaſhed. *Str.* 190. But it doth not appear from this report, whether the wife was alive or dead.

Of every poor perſon not able to work] *M.* 13 *W. St. Andrews Underſhaft* and *Jacob Mendez de Breta.* The defendant being a Jew, had an only daughter, who was converted from Judaiſm, and embraced Chriſtianity. Whereupon the defendant turned her out of doors, and refuſed to allow her any maintenance. On complaint to the ſeſſions, they reciting that ſhe was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) ſhould allow her 20*s.* a month. But becauſe they did not alledge that ſhe was poor, or likely to become chargeable, the order was quaſhed. L. *Raym.* 699.

E. 1 *G.*

E. 1 *G. K.* and *Gulley.* It was moved to quaſh an order of ſeſſions. The order ſet out, that one *Mary Gulley* was in a poor deſtitute condition, and that her father was able to maintain her, and therefore they make an order upon him to allow her 2 *s.* 6 *d.* a week, till further order. Objected, It did not appear, that ſhe was lame, blind, or unable to work; ſo that tho' ſhe was in a deſtitute condition, it might be becauſe ſhe would not work: And upon this exception the court quaſhed the order of ſeſſions. *Foley* 47.

Being of a ſufficient ability] *H.* 12 *An. Q.* and *Halliſax.* Order for the father-in-law to pay ſo much a week to his daughter-in-law, was quaſhed, becauſe it was not ſaid that he was of a ſufficient ability. *Caſes of S.* 52.

In that manner as by the juſtices in ſeſſions ſhall be aſſeſſed] *E.* 5 *An. Jenkins's* caſe. An order of ſeſſions was made, that the defendant ſhould pay 2 *s.* a week towards the ſupport of his father, till that court ſhould order the contrary. Which was held good; becauſe it was *indefinite*, and no ſet time limited: and if an eſtate happened to fall to him, they might apply to the juſtices; otherwiſe if a time was limited. 2 *Salk.* 534.

By the juſtices in ſeſſions] If the child live in the county of *Middleſex*, and be maintained by the pariſh there, and the grandfather lives in the county of *Suffolk*, the juſtices of *Middleſex* can make no order therein, but the juſtices of the county of *Suffolk* muſt make order. 2 *Bulſt.* 346.

As by the juſtices in ſeſſions ſhall be aſſeſſed] *T.* 9 *An. Q.* and *Jones.* There was an order for the grandmother to take care of her grandchildren, and by the order they ſend the grandchildren to the grandmother. By the whole court, they cannot ſend the grandchildren to the grandmother; but the juſtices ought to have made a rate upon the grandmother of ſo much a week. *Foley* 41.

2. *Whereas ſometimes men run away, leaving their wives and children, and ſometimes women run away, leaving their children, upon the charge of the pariſh, altho' ſuch perſons have ſome eſtates which ſhould eaſe the pariſh of their charge, in whole or in part; It ſhall be lawful for the churchwardens or overſeers, where any ſuch wife, child, or children ſhall be ſo left, on application to, and by warrant or order of two juſtices, to take and ſeize ſo much of the goods and chattels, and receive ſo much of the annual rents and profits of the lands and tenements of ſuch huſband, father, or mother, as ſuch two juſtices ſhall order and direct, towards the diſcharge of the pariſh or place, where ſuch wife, child, or children are left, for the* Parents running away.

bringing up and providing for ſuch wife, child, or children; which warrant or order being confirmed at the next quarter ſeſſions, it ſhall be lawful for the juſtices there, to make an order for the churchwardens or overſeers, to diſpoſe of ſuch goods or chattels by ſale or otherwiſe, or ſo much of them, for the purpoſes aforeſaid, as the court ſhall think fit, and to receive the rents and profits, or ſo much of them as ſhall be ordered by the ſaid ſeſſions, of his or her lands and tenements for the purpoſes aforeſaid. 5 G. c. 8. ſ. 1.

And the ſaid churchwardens and overſeers ſhall be accountable to the juſtices at the quarter ſeſſions for all ſuch money as they ſhall ſo receive. ſ. 2.

And further to compel huſbands and parents to maintain their own families, the law hath alſo provided, that *all perſons running away out of their pariſhes, and leaving their families upon the pariſh, ſhall be deemed and ſuffer as incorrigible rogues.* 7 J. c. 4. ſ. 8.

And if a perſon doth but threaten to run away, and leave his wife or children upon the pariſh; *he ſhall, on conviction before one juſtice, by confeſſion, or oath of one witneſs, be committed to the houſe of correction, for any time not exceeding one month.* 17 G. 2. c. 5.

And by the 7 J. c. 4. *If any man or woman ſhall threaten to run away and leave their families upon the pariſh, and the ſame be proved by two witneſſes on oath before two juſtices of that diviſion; the perſon ſo threatning ſhall be ſent to the houſe of correction (unleſs he can put in ſufficient ſureties for the diſcharge of the pariſh) there to be dealt with as a ſturdy and wandring rogue, and to be delivered at the ſeſſions, and not otherwiſe.* ſ. 8.

For the further maintenance of the poor, there are many fines and forfeitures payable to their uſe; as, for ſwearing, drunkenneſs, deſtroying the game, and in many other inſtances, which are to be found under their proper titles.

As alſo, parts of waſtes, woods, and paſtures may be incloſed for the growth and preſervation of timber and underwood for their relief; as is ſet forth under the title **Wood.**

V. Of the relief and ordering of the poor.

Poor to be maintained within their own pariſhes.

1. By the ſtatute of the 43 *El. c.* 2. the ſeveral pariſhes were required to maintain and employ their own poor, under the direction of two juſtices; in conſequence whereof, before the ſtatute of *C.* 2. the juſtices were wont to ſend the poor to their own pariſhes to be relieved and ordered:

and

and there is no power given by either of thoſe ſtatutes, nor by any other (except in the caſe of certificate perſons, and in the caſe of contracting as is herein after mentioned) to the churchwardens or overſeers to relieve any perſons out of their own pariſh, much leſs any obligation upon them to exerciſe that part of their office out of their own juriſdiction.

And in the caſe of *Clypton* and *Raviſtock*, *E.* 11 *Ann.* it was adjudged as follows: There was an order reciting, Whereas *John Sanderſon* and his wife are laſt ſettled in *Clypton*; theſe are to order you the churchwardens of *Clypton*, to repair to the pariſh of *Raviſtock*, and to relieve them, being ſo ſick that they cannot be removed. By the court; The juſtices have no authority to ſend for officers out of another pariſh, but the pariſh where the poor reſide are bound to maintain them as long as they continue with them. And by *Powell* J. altho' they be not pariſhioners, yet they are to be relieved till they are carried to their own pariſh. *Caſ. of S.* 49.

2. By the 43 *El. c.* 2. *The churchwardens and overſeers, with the conſent of two juſtices* (1 Q.) *ſhall take order from time to time, for ſetting to work the children of all ſuch whoſe parents ſhall not by the ſaid churchwardens and overſeers, or the greater part of them, be thought able to keep and maintain their children; and for ſetting to work all ſuch perſons, married or unmarried, having no means to maintain them, and uſing no ordinary and daily trade; and for the neceſſary relief of the lame, impotent, old, blind, and ſuch other among them being poor, and not able to work.* ſ. 1. Order to be taken therein.

And the ſaid juſtices, or one of them, ſhall ſend to the houſe of correction, or common gaol, ſuch as ſhall not employ themſelves to work, being appointed thereunto as aforeſaid. ſ. 4.

Poor, and not able to work] *M.* 3 *G. K.* and the inhabitants of *Highworth.* There was an order to pay 3*s.* weekly to a poor perſon, by the pariſh of *Highworth*, ſo long as he ſhall continue poor. It was objected, that by the ſtatute it ought to appear that they are poor and impotent. *Parker* Ch. J. I favour theſe orders as much as I can, becauſe no body takes care to draw them up for the poor. But it muſt be quaſhed. *Str.* 10.

On the authority of this caſe, *E.* 3 *G. K.* and *Stokegurſey*, an order was quaſhed for the ſame fault. So, *E.* 4 *G. K.* and *Tipper*, an order to maintain a daughter-in-law. *id.*

3. By the 3 *C. c.* 4. *The churchwardens and overſeers may, by the conſent of two juſtices* (1 Q.) *within their reſpective* Setting up trades.

tive limits, wherein ſhall be more juſtices than one; and where no more ſhall be than one, with the aſſent of that one juſtice, ſet up and uſe any trade, miſtery, or occupation, only for the ſetting on work, and better relief of the poor. ſ. 22.

Erecting cottages.

4. *The churchwardens and overſeers, or the greater part of them, by the leave of the lord of the manor, whereof any waſte or common within their pariſh is parcel, and on agreement with him made in writing, under his hand and ſeal; or otherwiſe, according to any order to be ſet down by the juſtices in ſeſſions, by like leave and agreement of the lord in writing under his hand and ſeal, may build in fit and convenient places of habitation in ſuch waſte or common, at the charge of the pariſh, or otherwiſe of the hundred or county as aforeſaid, to be rated and gathered in manner before expreſſed, convenient houſes of dwelling for the ſaid impotent poor; and may place inmates, or more families than one, in one cottage or houſe, notwithſtanding the ſtatute of the* 31 El. *Which cottages, or places for inmates, ſhall not be employed for any other habitation, but only for impotent and poor of the ſame pariſh placed there by the churchwardens and overſeers.* 43 El. c. 2. ſ. 5.

Overſeers may contract for the maintenance and employment of the poor.

5. *It ſhall be lawful for the churchwardens and overſeers, in any pariſh, townſhip, or place, with the conſent of the major part of the pariſhioners or inhabitants, in veſtry, or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, to purchaſe or hire any houſe or houſes, in the ſame pariſh, townſhip, or place, and to contract with any perſon or perſons for the lodging, keeping, maintaining, and employing any or all ſuch poor in their reſpective pariſhes, townſhips, or places, as ſhall deſire to receive relief or collection, and there to keep, maintain, and employ all ſuch poor perſons, and take the benefit of the work, labour, and ſervice of any ſuch poor perſons, who ſhall be kept or maintained in any ſuch houſe or houſes, for the better maintenance and relief of ſuch poor perſons, who ſhall be there kept or maintained. And if any poor perſon ſhall refuſe to be lodged, kept, or maintained in ſuch houſe or houſes, he ſhall be put out of the pariſh book, and ſhall not be intitled to receive relief from the churchwardens and overſeers.* 9 G. c. 7. ſ. 4.

Two or more places may join.

6. *And where any pariſh or townſhip ſhall be too ſmall to purchaſe or hire ſuch houſe or houſes, it ſhall be lawful for two or more ſuch pariſhes, townſhips, or places, with the conſent of the major part of the pariſhioners or inhabitants of their reſpective pariſhes, townſhips, or places, in veſtry or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, and with the approbation of any juſtice of the peace*

dwelling

dwelling in or near any ſuch pariſh, townſhip, or place, ſignified under his hand and ſeal, to unite in purchaſing, hiring, or taking ſuch houſe, for the lodging, keeping, and maintaining of the poor of the ſeveral pariſhes, townſhips, or places ſo uniting, and there to keep, maintain, and employ the poor of the reſpective pariſhes, townſhips, or places ſo uniting, and to take and have the benefit of the work, labour, or ſervice of any poor there kept and maintained, for the better maintenance and relief of the poor there kept, maintained and employed. And if any poor perſon in the reſpective pariſhes, townſhips, or places ſo uniting, ſhall refuſe to be lodged, kept, and maintained in the houſe hired or taken for ſuch uniting pariſhes, townſhips, or places, he ſhall be put out of the collection book, and not intitled to aſk relief. 9 G. c. 7. ſ. 4.

7. *And it ſhall be lawful for the churchwardens and overſeers of any pariſh, townſhip, or place, with the conſent of the major part of the pariſhioners or inhabitants of the ſaid pariſh, townſhip, or place, where ſuch houſe or houſes ſhall be purchaſed or hired for the purpoſes aforeſaid, in veſtry or other pariſh or publick meeting for that purpoſe aſſembled, or of ſo many of them as ſhall be ſo aſſembled, upon uſual notice thereof firſt given, to contract with the churchwardens and overſeers of any other pariſh, townſhip, or place, for the lodging, maintaining, or employing of any poor perſon or perſons of ſuch other pariſh, townſhip, or place, as to them ſhall ſeem meet. And if any poor perſon of ſuch other pariſh, townſhip, or place, ſhall refuſe to be lodged, maintained, and employed in ſuch houſe or houſes, he ſhall be put out of the collection book, and not be intitled to have relief.* 9 G. c. 7. ſ. 4.

The overſeers of one place may contract with thoſe of another, without joining.

8. *No perſon ſhall be allowed to have or receive collection at the charge of the pariſh, but by authority under the hand of one juſtice reſiding within ſuch pariſh, or (if none be there dwelling) in the parts near or next adjoining, or by order of the juſtices in ſeſſions, except in caſes of peſtilential diſeaſes, plague, or ſmall pox, for ſuch families only as ſhall be therewith infected.* 3 W. c. 11. ſ. 11.

Order of maintenance by the juſtices.

And no juſtice ſhall order relief to any poor perſon, until oath be made before him of ſome matter, which he ſhall judge to be a reaſonable cauſe for having ſuch relief; and that the ſame perſon had by himſelf, or ſome other, applied for relief to the pariſhioners at ſome veſtry or other publick meeting, or to two of the overſeers, and was by them refuſed to be relieved; and until ſuch juſtice hath ſummoned two of the overſeers to ſhew cauſe why ſuch relief ſhould not be given, and the perſon ſo ſummoned hath been heard or made default to appear. 9 An. c. 7. ſ. 1.

9. *And*

Perſons relieved to be entred in a book.

9. *And there ſhall be provided and kept in every pariſh, a book wherein the names of all perſons who receive collection ſhall be regiſtred, with the day and year when they were firſt admitted to have relief, and the occaſion which brought them under that neceſſity: and yearly in* Eaſter *week, or as often as ſhall be thought convenient, the pariſhioners ſhall meet in the veſtry or other uſual place of meeting in the pariſh, before whom the book ſhall be produced, and all perſons receiving collection to be called over, and the reaſons of their taking relief examined, and a new liſt made and entred.* 3 W. c. 11. ſ. 11.

And no officer ſhall (except upon ſudden and emergent occaſions) bring to the account of the pariſh, any money he ſhall give to any poor perſon who is not regiſtred in ſuch book, as a perſon intitled to receive collection; on pain of 5 l. *by diſtreſs, by warrant of two juſtices, who ſhall have examined into and found him guilty of ſuch offence; which ſaid ſum ſhall be applied to the uſe of the poor by direction of the juſtices.* 9 G. c. 7. ſ. 2.

And badged.

10. Moreover, *Every ſuch perſon as ſhall be upon the collection, and receive relief of any pariſh or place, and the wife and children of any ſuch perſon cohabiting in the ſame houſe (ſuch child only excepted, as ſhall be by the churchwardens and overſeers permitted to live at home, in order to attend an impotent and helpleſs parent) ſhall upon the ſhoulder of the right ſleeve of the uppermoſt garment, in an open and viſible manner, wear a large* Roman P, *together with the firſt letter of the name of the pariſh or place, whereof ſuch poor perſon is an inhabitant, cut either in red or blue cloth, as by the churchwardens and overſeers ſhall be directed: And if any ſuch poor perſon ſhall neglect or refuſe to wear ſuch badge or mark, it ſhall be lawful for one juſtice to puniſh ſuch offender, either by ordering his allowance to be abridged, ſuſpended, or withdrawn, or otherwiſe by committing him to the houſe of correction, to be whipt and kept to hard labour, not exceeding* 21 *days; And if any churchwarden or overſeer ſhall relieve any ſuch poor perſon, not wearing ſuch badge, and be thereof convicted on oath of one witneſs before one juſtice, he ſhall forfeit* 20 s. *by diſtreſs, half to the informer and half to the poor* 8 & 9 W. c. 30. ſ. 2.

Spirituous liquors not to be uſed in workhouſes.

11. By the 24 G. 2. *c.* 40. *No ſpirituous liquors ſhall be ſold or uſed in any workhouſe, or houſe of entertainment for pariſh poor;* as is ſet forth more at large, in the article relating to ſpirituous liquors, under the title **Exciſe.**

Obſervation.

One obſervation I ſhall here ſubjoin, in relation to the ſtatute of the 9 *G. c.* 7. abovementioned, with regard to the

the contracting for the lodging, maintaining, and employing the poor together in one houſe; which is this, That as the beſt judgment of the uſefulneſs of any law muſt be drawn from experience, we may pronounce this act to be very beneficial, becauſe it hath been put in practice in many pariſhes and places with good effect; and I have from many years obſervation never known it to fail of reducing the rates in a few years very conſiderably, and in ſome places near one half. Upon which fact this conſequence ariſeth, that generally the poor are better regulated in large than in ſmall communities. And this ſuggeſts one bad effect of the clauſe in the ſtatute of the 13 & 14 *C.* 2. which ſubdivides the pariſhes into townſhips; whereby the ſeveral little villages in a pariſh, inſtead of being intent upon the employing and maintaining their poor, are often ſet by the ears together about ſettlements, when perhaps there is no diſpute at all but that the ſettlement is in the pariſh at large. Indeed where the pariſh is very extenſive, it may be convenient, or neceſſary, to ſubdivide. But, generally, it ſeemeth, that this practice hath been extended much too far. For the remedy whereof, it might be of uſe, to give the juſtices a power, and to require them, to lay together ſo many townſhips or pariſhes as ſhall be thought expedient, containing in the whole not leſs than ſuch a number of families, or not leſs than ſuch a yearly value of the eſtates. The benefits whereof would be theſe: 1. Suppoſe ten ſmall townſhips are laid together, juſt nine parts in ten of the ſquabbles about ſettlements will be prevented. 2. Nine parts in ten, or if the poor are maintained in ſeparate families as is frequently done, at leaſt ninety-nine houſe rents in a hundred, will be ſaved. 3. Abundance of cottages will be deſolated, which now harbour nothing but beggars and thieves. 4. Leſs common will be deſtroyed, and wood conſumed, for fuel. And, 5. The poor will be better ordered.

Oath of a poor perſon wanting maintenance.

A. P. *of* ——— *in the pariſh of* ——— *in the county of* ——— *maketh oath, that he is very poor and impotent, and not able to provide for himſelf and his family, and that his lawful ſettlement is in the ſaid pariſh of* ——— *and that on* ——— *laſt he did apply for relief to the pariſhioners of the ſaid pariſh at a veſtry* (or other publick) *meeting* [or, to two of the overſeers of the poor of the ſaid pariſh] *and was by them refuſed to be relieved.*

A. P.

Taken

Taken and made before me one of his majeſty's juſtices of the peace for the ſaid county, the ——— day of ——— J. P.

Warrant thereupon to ſummon the overſeers.

Weſtmorland. { To the conſtables of ——— in the pariſh of ——— in the ſaid county, and to every of them.

WHEREAS A. P. *of your pariſh hath this day made oath before me ——— one of his majeſty's juſtices of the peace in and for the ſaid county, that he the ſaid* A. P. *is very poor and impotent, and not able to provide for himſelf and his family; and that he the ſaid* A. P. *did on ——— laſt apply to the pariſhioners of your ſaid pariſh at a veſtry* (or other publick) *meeting* [or, *to* A. B. *and* C. D. *two of the overſeers of the poor of the ſaid pariſh*] *and was by them refuſed to be relieved: Theſe are therefore to require you in his ſaid majeſty's name, to ſummon two of the overſeers of the poor of the ſaid pariſh, to appear before me on ——— next at the houſe of ——— in ——— in the ſaid county, at the hour of ——— in the forenoon of the ſame day, to ſhew cauſe why relief ſhould not be given to the ſaid* A. P. *And be you then there with this precept, to certify what you ſhall have done in the execution hereof. Given under my hand and ſeal the ——— day of ——— in the ——— year ———*

Order for maintenance.

Weſtmorland. WHEREAS A. P. *of ——— in the pariſh of ——— in the ſaid county of ——— yeoman, hath made oath before me ——— one of his majeſty's juſtices of the peace for the ſaid county, that he the ſaid* A. P. *is very poor and impotent, and not able to work; and that he the ſaid* A. P. *did on ——— laſt apply for relief to the pariſhioners of the ſaid pariſh of ——— at a veſtry* (or, *publick) meeting* [or, *to* A. B. *and* C. D. *two of the overſeers of the poor of the ſaid pariſh*] *and was by them refuſed to be relieved; And whereas* A. B. *and* C. D. *overſeers of the poor of the ſaid pariſh, have been duly ſummoned by me, to ſhew cauſe why relief ſhould not be given to the ſaid* A. P. *and have appeared before me in purſuance of ſuch ſummons, but have not made any ſufficient cauſe to appear as aforeſaid* [or, *but have made default to appear before me according to ſuch ſummons*]:

ſummons]: *I do therefore hereby order the churchwardens and overſeers of the poor of the ſaid pariſh, or ſome of them, to pay unto the ſaid* A. P. *the ſum of* ——— *weekly and every week, for and towards his ſupport and maintenance, until ſuch time as they ſhall be otherwiſe ordered according to law to forbear the ſaid allowance. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———.

Contract for maintenance.

AT *a publick meeting of the inhabitants of the pariſh of* ——— *in the county of* ——— *for that purpoſe aſſembled, upon uſual notice thereof firſt given; it is contracted by and with the conſent of the major part of the ſaid inhabitants ſo aſſembled as aforeſaid, between* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H. *overſeers of the poor of the ſaid pariſh, of the one part, and* A. M. *of* ——— *in the ſaid pariſh, yeoman, of the other part; That he the ſaid* A. M. *ſhall and will during the ſpace of one whole year to commence from* ——— *next enſuing, at his own proper coſts and charges, in the houſe in which he now dwelleth, find, provide, and allow unto all ſuch poor people as ſhall be lawfully intitled to relief and maintenance from the ſaid pariſh, and ſhall be brought unto him by the churchwardens or overſeers of the poor aforeſaid, or any of them, or by their or any of their ſucceſſors for the time being, ſufficient lodging, meat, drink, cloathing, employment, and other things neceſſary for their keeping and maintenance; And that in conſideration thereof, the ſaid churchwardens and overſeers of the poor, and their ſucceſſors reſpectively, ſhall pay or cauſe to be paid to the ſaid* A. M. *the ſum of* ——— *in equal proportions* ——— *The ſaid* A. M. *to have moreover and take unto himſelf the benefit of the ſaid poor peoples work, labour, and ſervice during the ſaid term. In witneſs whereof the parties to theſe preſents have hereunto ſet their hands, the* ——— *day of* ———.

It may perhaps be requiſite to inſert a clauſe more particularly with reſpect to the article of *cloathing*; ſetting forth in what condition they ſhall go, and in what condition be delivered back again.

As alſo, if they ſhall *die*; who ſhall be at the expence of burying them, and what ſhall become of their cloaths and other ſmall effects.

As alſo, if they ſhall be *refractory* or ungovernable; who ſhall be at the charge of ſending them to the houſe of correction, or otherwiſe reducing them to good behaviour.

And other clauſes as there may be occaſion.

If two pariſhes or townſhips ſhall join in ſuch contracting, it will be neceſſary to inſert in the contract, the conſent of a juſtice of the peace; as thus,

- - - - - *by and with the conſent of the major part of the ſaid inhabitants ſo aſſembled as aforeſaid reſpectively, and alſo by and with the conſent of* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, dwelling in the ſaid pariſh of* ——— [or, *near to the ſaid pariſhes, or townſhips of*] - - - - -

And the aſſent of the ſaid juſtice may be indorſed thereon, as follows;

I ——— *eſquire, one of his majeſty's juſtices of the peace for the within mentioned county of* ——— *and dwelling in the within mentioned pariſh of* ——— [or, *near to the within mentioned pariſhes, or townſhips of* ———] *do conſent unto, allow, and approve of the within written contract. Given under my hand and ſeal the* ——— *day of* ———.

VI. Of the overſeers account.

Account.

1. By the 43 *El. c.* 2. *The churchwardens and overſeers ſhall, within four days after the end of their year, and other overſeers nominated, make and yield up to two juſtices* (1 Q.) *a true and perfect account of all ſums by them received, or rated and aſſeſſed and not received, and alſo of ſuch ſtock as ſhall be in their hands, or in the hands of any of the poor to work, and of all other things concerning their office: And ſuch ſums of money as ſhall be in their hands, ſhall pay and deliver over to their ſucceſſors: And the ſubſequent churchwardens or overſeers, by warrant from two ſuch juſtices, may levy by diſtreſs and ſale of the offender's goods, the ſaid ſums or ſtock which ſhall be behind on any account to be made; and in defect of ſuch diſtreſs, two ſuch juſtices may commit him to the common gaol, there to remain without bail or mainpriſe, until payment of the ſaid ſum and ſtock: And alſo any ſuch two juſtices may commit to the ſaid priſon, every one of the ſaid churchwardens and overſeers, which ſhall refuſe to account, there to remain without bail or mainpriſe, until he have made a true account, and ſatisfied and paid ſo much as upon the ſaid account ſhall be remaining in his hands.* ſ. 2, 4.

And by the 17 G. 2. *c.* 38. it is enacted as follows: *The churchwardens and overſeers ſhall yearly, within fourteen days after other overſeers ſhall be appointed, deliver in to the ſucceeding overſeers a juſt account in writing, fairly entred in a*

book to be kept for that purpoſe, and ſigned by them, of all ſums by them received, or rated and not received; and alſo of all materials that ſhall be in their hands, or in the hands of any of the poor to be wrought, and of all money paid by ſuch churchwardens and overſeers ſo accounting, and of all other things concerning their office; and ſhall alſo pay and deliver over all ſums of money and other things, which ſhall be in their hands, to the ſucceeding overſeers; which account ſhall be verified by oath before one juſtice, who ſhall ſign and atteſt the taking of the ſame, at the foot of the account, without fee; and the ſaid books ſhall be preſerved by the churchwardens and overſeers, in ſome publick or other place within the pariſh or townſhip; and they ſhall permit any perſon aſſeſſed, or liable to be aſſeſſed, to inſpect the ſame at all ſeaſonable times, paying 6 d. *for ſuch inſpection; and ſhall upon demand give copies at the rate of* 6 d. *for every* 300 *words, and ſo in proportion. And if they ſhall refuſe or neglect to make and yield up ſuch account verified as aforeſaid within ſuch time, or ſhall refuſe or neglect to pay over the money and other things in their hands; any two juſtices may commit them to the common gaol, till they ſhall have given ſuch account, or ſhall have paid and yielded up ſuch money and other things in their hands as aforeſaid.* ſ. 1, 2.

Churchwardens] *M.* 15 *C.* 2. *K.* and *Pecke.* The churchwarden was committed for refuſing to account, for all monies received and diſburſed by him, and of all ſuch things as concern his office. But upon an *habeas corpus* he was diſcharged; for if he be committed as overſeer, it muſt be ſo expreſſed in the *mittimus*, altho' to be overſeer be annexed to the office of churchwarden, for the juſtices have no power over him as churchwarden. 1 *Keb.* 574.

Such money as ſhall be in their hands, ſhall pay and deliver over to their ſucceſſors] *M.* 8 *G.* 2. *K.* and the juſtices of *Somerſetſhire. Mandamus* to the juſtices, to grant a warrant for levying 30 *l.* 17 *s.* 11 *d.* being the balance of the laſt overſeers account in their hands. They return, that true it is there was ſuch a balance, but that the veſtry had ordered them to retain it, and employ an attorney to ſue for ſome charity money, and get it laid out for the benefit of the poor; that one *Young* was ſo employed, and the balance exhauſted in fees, and that the overſeers had engaged to pay *Young*; and for that cauſe they had refuſed to grant the warrant. But by the court, There muſt go a peremptory *mandamus*; for the ſtatute ſays, the balance ſhall be paid over to the new overſeers, under a penalty; and it is

not in the power of the veſtry, to diſpenſe with the ſtatute. *Str.* 992.

Until he have made a true account] *T.* 2 *W. The mayor* and *churchwardens of Northampton.* The mayor committed the churchwardens, as overſeers of the poor, for refuſing to account, and the warrant of commitment concluded, *until they be duly diſcharged according to law.* The court held the commitment void; becauſe the warrant ought to conclude, *there to remain until they ſhall account*, as the ſtatute doth appoint. And the difference is, where a man is committed as a criminal, and where only for contumacy; for in the firſt caſe, the commitment muſt be, until diſcharged according to law; but in the latter, until he comply and perform the thing required; for in that caſe, he ſhall not lie till a ſeſſions, but ſhall be diſcharged upon performance of his duty. *Carth.* 153.

Overſeer removing or dying.

2. *And if any overſeer ſhall remove, he ſhall before his removal, deliver over, to ſome churchwarden or other overſeer, his accounts verified as aforeſaid, with all aſſeſſments, books, papers, money, and other things concerning his office; and if any overſeer ſhall die, his executors or adminiſtrators ſhall within* 40 *days after his deceaſe, deliver over all things concerning his office to ſome churchwarden or other overſeer, and ſhall pay out of the aſſets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.* 17 G. 2. c. 38. ſ. 3.

Appeal againſt the account.

3. By the 43 *El. c.* 2. *If any perſon ſhall find himſelf aggrieved by any act done by the ſaid overſeers or juſtices; he may appeal to the general quarter ſeſſions, whoſe order therein ſhall bind all parties.* ſ. 6.

And this power of appealing generally, doth not ſeem to be taken away by the ſtatute here next following; but the ſame being only in the affirmative, it ſeemeth that they may both ſtand together, and that the appeal may be upon either of the ſtatutes.

And upon this ſtatute of the 43 *El.* the appeal is not limited to the *next* ſeſſions, but may be at any time after.

The other ſtatute abovementioned, with regard to this matter, is as follows: *If any perſon ſhall have any material objection to ſuch account or any part thereof, he may, giving reaſonable notice, appeal to the next ſeſſions; but if reaſonable notice be not given, then they ſhall adjourn the appeal to the next ſeſſions after; and the court may award coſts to either party, as in caſes of ſettlements by the* 8 & 9 W. 17 G. 2. c. 38. ſ. 4.

So that here is power to award coſts, if the appeal is to the next ſeſſions; but if the appeal is upon the 43 *El.* and not to the next ſeſſions, there is no power in ſuch caſe to award coſts.

And by the ſaid ſtatute of the 17 *G.* 2. *c.* 38. *In all corporations or franchiſes, which have not four juſtices, perſons aggrieved may appeal, if they think fit, to the next county ſeſſions.* ſ. 5.

M. 4 *An. Q.* and *Hedges.* On appeal upon the ſtatute of the 43 *El.* againſt the allowance of the account by two juſtices, the ſeſſions ordered the overſeer to pay ſo much over, which they adjudged to be in his hands; and for not doing this, they committed him. But by the court; They ſhould have levied the arrears by diſtreſs and ſale, and in default of diſtreſs have committed him; for the ſeſſions muſt execute their judgment, in the ſame manner as the two juſtices muſt do. 2 *Salk.* 533.

T. 7 *G. K.* and *Bartlett.* An order made at the ſeſſions relating to accounts of overſeers, was moved to be quaſhed, becauſe it did not appear that the accounts had been before the juſtices out of ſeſſions, and they cannot come *per ſaltum* to the ſeſſions. On the other ſide it was ſaid, that it appeared there was an allowance, for the appeal is ſaid to be againſt the diſburſements *and the allowance thereof*, which the court will preſume was regular. But by the court, It doth not follow, that this was an allowance by two juſtices, for the pariſh might do it; and therefore for want of juriſdiction this order muſt be quaſhed. *Str.* 983.

Allowance of the account.

Weſtmorland. PERUSED *and allowed (having been firſt ſigned and verified on oath by* A. B. *and* C. D. *churchwardeas, and* E. F. *and* G. H. *overſeers of the poor) By me one of his majeſty's juſtices of the peace in and for the ſaid county, the —— day of ——.*

J. P.

VII. Penalty of overſeers for the neglect of their duty.

1. In general, *Overſeers being negligent in their office, ſhall forfeit for every default* 20 s. *to the poor, to be levied by ſome or one of the churchwardens or overſeers, by warrant of two juſtices* (1 Q.) *by diſtreſs; or in defect thereof, any two ſuch juſtices may commit the offender to the common gaol, there to remain*

remain without bail or mainprise, till the said forfeiture shall be paid. 43 El. c. 2. s. 2, 11.

2. And by the 17 G. 2. *c.* 38. *Any parish officer neglecting to obey any directions of that act, being convicted thereof on oath before two justices, in two kalendar months after the offence committed, shall forfeit not exceeding* 5 l. *nor less than* 40 s. *to the poor, by distress.* s. 14.

3. And *in all actions to be brought in the courts at* Westminster, *or at the assizes, for the recovery of any sum misspent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.* 3 W. c. 11. s. 12.

VIII. Indemnity of overseers in the performance of their duty.

1. By the 7 *J. c.* 5. and 21 *J. c.* 12. *If any action be brought against any overseer, or other person which in his aid, or by his commandment, shall do any thing concerning his office, he may plead the general issue, and if he recovers, he shall have double costs: And such action shall be laid in the proper county, and not elsewhere.*

2. And by the 43 *El. c.* 2. *Persons sued for any thing done on that act, may plead the general issue, and have treble damages with costs, and that to be assessed by the same jury or writ to inquire of the damages.* s. 19.

Pope. See Popery.

Popery.

I. General observations.
II. Popish supremacy opposed and abolished.
III. Concerning the pope's presentation to benefices.
IV. Bringing bulls and other instruments from Rome.
V. Popish books and relicks.
VI. Foreign education of papists.
VII. Penalty of perverting others, or being perverted to popery.
VIII. Jesuits and popish priests.

IX. Saying

IX. Saying and hearing maſs.
X. Penalties of 12 d. *a* ſunday, *and* 20 l. *a month, for not going to church.*
XI. Regiſtring eſtates.
XII. Inrolling deeds and wills.
XIII. Double taxes.
XIV. Papiſts not to come to court.
XV. Not to come within ten miles of London.
XVI. Papiſts confined to their habitations.
XVII. Not to inherit, or take by deviſe.
XVIII. Shall not purchaſe.
XIX. Shall not preſent to benefices.
XX. Shall not teach ſchool.
XXI. Diſabled as to offices, law, phyſick.
XXII. Not to be executor, or adminiſtrator.
XXIII. Not to be guardian.
XXIV. Shall be deemed excommunicate.
XXV. Popiſh baptiſm.
XXVI. Popiſh marriage.
XXVII. Popiſh burial.
XXVIII. Armour.
XXIX. Horſes.
XXX. Popiſh wife.
XXXI. Heir of a popiſh recuſant.
XXXII. Proteſtant children of papiſts.
XXXIII. Oaths.
XXXIV. Miniſter to preſent papiſts.
XXXV. Recuſants conforming.
XXXVI. Eccleſiaſtical juriſdiction.

I. General obſervations.

1. IT is to be obſerved in general, that *popiſh* recuſants are liable to all the forfeitures and diſabilities, and other inconveniences, to which other recuſants are liable; and to many others, to which other recuſants are not liable.

For to be a *recuſant*, doth not neceſſarily imply the being a *papiſt*: But a *recuſant* is any perſon who refuſes to go

to church, and worſhip god, after the manner of the church of *England*: A *popiſh recuſant*, is a papiſt who ſo refuſeth: And a *popiſh recuſant convict*, is a papiſt legally convicted thereof. For the want of attending to which diſtinction, divers authors who have treated of this ſubject, have fallen into confuſion.

2. There are ſeveral ſtatutes made againſt recuſants in Q. *Elizabeth*'s reign, and the former part of the reign of K. *James* the firſt, which are not reſtrained to popiſh recuſants only; but as there were few or no other recuſants but papiſts at that time, they have regard chiefly to perſons of that profeſſion: and therefore they are inſerted under this title: altho' the words of them do extend, and the act of toleration ſuppoſes them to extend, to all nonconformiſts in general. But the force of them as to proteſtant diſſenters is taken away by that act. But no papiſt, or popiſh recuſant, ſhall have any benefit by the act of toleration.

3. The reader will obſerve from the dates of the ſeveral acts, how the penalties have from time to time been inforced and inlarged, upon every freſh attempt againſt the government; eſpecially at the ſeveral periods during Q. *Elizabeth*'s reign, after the powder plot in the reign of K. *James* the firſt, and after the rebellion in 1715. One of the acts particularly, immediately after the powder plot, which will often occur in the following ſections, is, in the ſtatutes at large, a well penned act. It is much in the ſtyle of lord *Coke*; ſtrong, and clear: where tho' many words are uſed, yet none of them can be wanted. And probably it was drawn up by him. It brings the ſeveral laws together, which had been enacted on the ſubjects it treats of; and renders them all uſeleſs and dead, as much as if it had repealed them in expreſs words. And it may be a pattern in reducing into one general law, the ſeveral ſtatutes which on many heads are now become very numerous, and not a little confuſed.

4. In peruſing this whole title, wherein the laws againſt papiſts are brought clearly together in one view, it will occur poſſibly to remark, that they are many, and perhaps ſevere. But it ought to be conſidered withal, how proteſtants are treated in popiſh countries; and that the offences intended to be guarded againſt by theſe laws, are not the ſtealing of an ox, or the burning of an houſe, or any other invaſion of private property, but dethroning the prince, and overturning the government.

'Tis true, theſe laws in the preſent age have been permitted to ſleep in a great meaſure, and that even at a time when

when a rebellion was advancing, and a foreign invaſion attempted in favour of a popiſh prince and government: but they are ſuffered nevertheleſs to continue in force; perhaps that it may appear to the enemies of our conſtitution, that if they are ſpared, it is not for want of power, but of inclination to puniſh.

II. Popiſh ſupremacy oppoſed and aboliſhed.

1. Whoever ſhall affirm, that the king hath not the ſupreme authority in cauſes eccleſiaſtical, ſhall be excommunicated *ipſo facto*, and not reſtored but by the archbiſhop on his repentance. *Can.* 2.

2. By the ſtatute of the 27 *Ed.* 3. *ſt.* 1. *c.* 1. which is called the ſtatute of proviſors; perſons ſuing in a foreign realm, or impeaching judgment given in the king's court, ſhall incur a præmunire; that is, ſhall have a day given to appear in perſon to anſwer to the contempt, and if they come not, they ſhall be out of the king's protection, their lands and goods ſhall be forfeited, and their bodies impriſoned, and ranſomed at the king's will.

And if any bring into the realm a ſummons or excommunication againſt any one executing the ſtatute of proviſors, he ſhall ſuffer pain of life and member. 13 *R.* 2. *ſt.* 2. *c.* 3.

3. And by the 5 *El. c.* 1. If any perſon ſhall maintain the authority of the ſee of *Rome* in this realm, he ſhall incur a præmunire for the firſt offence, and for the ſecond ſhall be guilty of high treaſon. Proſecution to be within a year. And the juſtices in ſeſſions may enquire thereof, and ſhall certify the ſame into the king's bench. *ſ.* 2, 3, 4, 10, 11.

4. And if any perſon ſhall put in practice to abſolve or withdraw any ſubjects from their allegiance, or if any perſon ſhall be willingly ſo abſolved or withdrawn; he, his aiders and maintainers ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J. c.* 4. *ſ.* 22, 23, 25.

III. Concerning the pope's preſentation to benefices.

1. No perſon by authority from the court of *Rome*, ſhall diſturb any perſon of holy church, preſented or collated by the king or his ſubjects; on pain of fine and impriſonment. 25 *Ed.* 3. *ſt.* 6.

2. None

2. None ſhall take any benefice of an alien, or convey money to him for the farm thereof; on pain of incurring a præmunire. 3 *R.* 2. *c.* 3.

3. No alien ſhall purchaſe or occupy a benefice in *England*; on pain of a præmunire. 7 *R.* 2. *c.* 12.

4. He that ſhall go out of the realm, to procure a benefice, ſhall be out of the king's protection; and the ſame ſhall be void. 12 *R.* 2. *c.* 15.

5. If any perſon ſhall accept a benefice from the pope, he ſhall be baniſhed for ever, and his lands and goods forfeited. 13 *R.* 2. *ſt.* 2. *c.* 2.

6. No proviſion of a benefice not vacant, made by the pope, and licenſed by the king, ſhall be available; but perſons endeavouring to exclude the incumbent thereby, ſhall incur a præmunire. 7 *H.* 4. *c.* 8. 3 *H.* 5. *ſt.* 2. *c.* 4.

IV. Bringing bulls and other inſtruments from Rome.

1. By the ſtatute of the 16 *R.* 2. *c.* 5. (which is the famous ſtatute called the ſtatute of præmunire) If any perſon ſhall purchaſe, or bring into the realm, any bulls or inſtruments from *Rome*, or elſewhere, they ſhall incur a præmunire; that is to ſay, they ſhall be put out of the king's protection; and their lands and goods ſhall be forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or elſe proceſs ſhall be awarded againſt them by *præmunire facias* (ſo called from thoſe words in the writ).

2. But by a ſubſequent ſtatute, if any perſon ſhall get or publiſh any bull or inſtrument from *Rome*, he ſhall be guilty of high treaſon. And his aiders and comforters ſhall incur a præmunire. And concealing the ſame ſhall be miſpriſion of high treaſon. 13 *El.* *c.* 2. *ſ.* 3, 4, 5. And the juſtices of the peace may enquire thereof, within a year and day. 23 *El.* *c.* 1. *ſ.* 8.

V. Popiſh books and relicks.

1. If any perſon ſhall *have in his cuſtody* any books called antiphoners, miſſals, grailes, proceſſionals, manuals, legends, pies, portuaſſes, primers in *latin* and *engliſh* (except thoſe ſet out by K. *H.* 8.) couchers, journals, ordinals or other books for the ſervice of the church, not ſet forth by the king; he ſhall forfeit for the firſt offence 20*s.* for the ſecond 4*l.* and for the third ſhall be impriſoned at the king's will. And the juſtices of the peace in their general

ral ſeſſions may hear and determine the ſame. 3 & 4 *Ed.* 6. *c.* 10.

2. No perſon ſhall *bring from beyond the ſeas*, nor ſhall *print*, *ſell*, or *buy* any popiſh primers, ladies pſalters, manuals, roſaries, popiſh catechiſms, miſſals, breviaries, portals, legends, and lives of ſaints, containing ſuperſtitious matter, printed or written in any language whatſoever; nor any other ſuperſtitious book printed or written in *engliſh*; on pain of 40*s.* one third to the king, one third to him who ſhall ſue in any court of record, and one third to the poor of the pariſh where ſuch books ſhall be found; and the books to be burned. 3 *J.* *c.* 5. *ſ.* 25.

3. If any perſon ſhall *bring into the realm* any agnus dei, croſſes, pictures, beads, or ſuch like vain and ſuperſtitious things, from the biſhop of *Rome*, or any authoriſed by him to conſecrate the ſame, and offer them to any perſon to be worn or uſed; both the bringer and receiver ſhall incur a præmunire: But if the receiver ſhall in one day's time deliver the ſame to a juſtice of the peace, or if ſuch perſon to whom the ſame is offered ſhall carry the bringer before the next juſtice, or (if he cannot) ſhall diſcloſe the offender's name and place of abode or reſort, to the biſhop, or to a juſtice of the peace, he ſhall not incur a ſuch præmunire. And in ſuch caſe, the juſtice in 14 days ſhall ſignify the ſame to one of the privy council, on pain of incurring a præmunire. 13 *El.* *c.* 2. *ſ.* 7, 8, 10.

4. And two juſtices of the peace (and mayors and other chief officers in corporations) may *ſearch* the houſes and lodgings of every popiſh recuſant convict, or of every perſon whoſe wife is a popiſh recuſant convict, for popiſh books and relicks of popery: and if any altar, pix, beads, pictures, or ſuch like popiſh relicks, or any popiſh book, ſhall be found in their cuſtody, as in the opinion of the ſaid juſtices, mayor, or other chief officer, ſhall be thought unmeet for ſuch recuſant to have or uſe, the ſame ſhall be preſently defaced and burnt, if it be meet to be burned; and if it be a crucifix, or other relick of any price, the ſame to be defaced at the ſeſſions, and returned to the owner. 3 *J.* *c.* 5. *ſ.* 26.

VI. Foreign education of papiſts.

1. If any perſon ſhall contribute, or ſend over ſea, any money or other relief to any ſeminary abroad; he ſhall incur a præmunire. 27 *El.* *c.* 2. *ſ.* 6.

2. They who be in ſeminaries abroad ſhall return in ſix months after proclamation, and conform in two days, before the

the biſhop, or two juſtices of the peace; otherwiſe if they return at all, without ſubmiſſion, they ſhall be guilty of high treaſon. 27 *El. c.* 2. *ſ.* 5.

3. If any perſon ſhall go, or ſend any perſon, beyond the ſeas, to be popiſhly educated, who ſhall be there ſo inſtructed, or ſhall ſend any money or other thing for that purpaſe; he ſhall, on conviction before the judges of the king's bench, or of aſſize, be diſabled to be plaintiff in any action, or to be committee of any ward, or executor, or adminiſtrator, or capable of any legacy or deed of gift, or to bear any office; and ſhall forfeit his goods, and ſhall forfeit his lands during life. But if he ſhall conform in 6 months after his return, he ſhall be diſcharged. 3 *C. c.* 2. 1 *J. c.* 4. *ſ.* 6, 7.

4. Children, not being ſoldiers, mariners, merchants, or their apprentices or factors, departing the realm, on account of education, or otherwiſe, without licence from the king, or ſix of the privy council, ſhall take no benefit by any gift, conveyance, deſcent, deviſe, or otherwiſe, of any lands or goods, until they conform. 3 *J. c.* 5. *ſ.* 16. And perſons ſending any ſuch child over ſeas, without licence, ſhall forfeit 100 *l.* to him who ſhall ſue in any court of record. 3 *J. c.* 5. *ſ.* 16. 11 & 12 *W. c.* 4. *ſ.* 6.

5. No woman, or child under 21, except ſailors or factors, ſhall paſs over ſea without licence of the king and council; on pain that the officer of the port ſhall forfeit his office and his goods, the owner of the ſhip his veſſel, and the maſter his goods and be impriſoned 12 months. 1 *J. c.* 4. *ſ.* 8.

6. No perſon, not bred up by his parents in the popiſh religion, ſhall breed up or ſuffer his children to be bred up in the popiſh religion; on pain of being diſabled to bear any office, and of ſuch children alſo being diſabled to bear any office, until they conform. 25 *C.* 2. *c.* 2. *ſ.* 8.

VII. Penalty of perverting others, or being perverted to popery.

If any perſon ſhall put in practice to reconcile any ſubjects to popery, or if any perſon ſhall be willingly ſo reconciled; he, his aiders and maintainers, ſhall be guilty of high treaſon. The trial to be at the aſſizes, or in the king's bench. 3 *J. c.* 4. *ſ.* 22, 23, 25.

VIII. Je-

VIII. Jeſuits and popiſh prieſts.

1. No jeſuit or popiſh prieſt ſhall come into or be in the realm, on pain of high treaſon; unleſs he conform. 27 *El. c.* 2. *ſ.* 2, 3, 10.

2. And if any perſon ſhall knowingly receive or relieve any ſuch, he ſhall be guilty of felony without benefit of clergy. 27 *El. c.* 2. *ſ.* 4.

3. And if any perſon, knowing ſuch jeſuit or prieſt to be in the realm, ſhall not in 12 days diſcover the ſame to a juſtice of the peace or other higher officer, he ſhall be fined and impriſoned at the king's pleaſure. And if ſuch juſtice or other officer ſhall not in 28 days give information thereof to one of the privy council, he ſhall forfeit 200 marks. 27 *El. c.* 2. *ſ.* 13.

4. And a ſuſpected jeſuit or popiſh prieſt, being lawfully examined, and refuſing to anſwer whether he be a jeſuit or popiſh prieſt, ſhall be impriſoned till he make direct and true anſwer. 35 *El. c.* 2. *ſ.* 11.

5. And the perſon who ſhall firſt diſcover, to any juſtice of the peace, any perſon who ſhall entertain or relieve any jeſuit, ſeminary, or popiſh prieſt, within three days after the offence; ſo that by reaſon of ſuch diſcovery any offender ſhall be taken and convicted: ſuch perſon ſhall not only be freed from any penalty for ſuch offence, if himſelf be an offender therein, but ſhall alſo have the third part of the forfeitures if they do not exceed 150*l.* and if they do exceed 150*l.* then he ſhall have 50*l.* 3 *J. c.* 5. *ſ.* 1.

6. If any perſon ſhall apprehend any popiſh biſhop, prieſt, or jeſuit, and proſecute him till he be convicted of exerciſing any part of the office or function of a popiſh biſhop, or prieſt, he ſhall receive from the ſheriff 100*l.* reward. 11 & 12 *W. c.* 4. *ſ.* 1, 2.

7. If any popiſh biſhop, prieſt, or jeſuit, ſhall exerciſe any part of the office or function of a popiſh biſhop or prieſt (except in foreign miniſters houſes), he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

8. If any perſon ſhall contribute, or ſend over ſea, any money or other relief to any jeſuit or popiſh prieſt; he ſhall incur a præmunire. 27 *El. c.* 2. *ſ.* 6.

IX. Saying

IX. Saying and hearing maſs.

1. If *any perſon* ſhall *ſay or ſing maſs*, he ſhall forfeit 200 marks, and be impriſoned for a year, and till paid;

And if any perſon ſhall wilfully *hear* maſs, he ſhall forfeit 100 marks, and be impriſoned for a year;

The forfeitures to be one third to the king, one third to the poor, and one third to him who ſhall ſue in any court of record. And if not paid in 3 months after judgment, he ſhall be committed till he pays, or conforms. And the ſeſſions may determine the ſame. 23 *El. c.* 1. *ſ.* 4, 9, 10, 11.

2. If any popiſh *biſhop*, *prieſt*, *or jeſuit* ſhall ſay maſs, except in foreign miniſters houſes, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

3. And the perſon who ſhall firſt diſcover to any juſtice of the peace any maſs to have been ſaid, and the perſons that were preſent thereat, and the prieſt that ſaid the ſame, or any of them, within 3 days after the offence, and by reaſon of ſuch diſcovery any offender is taken and convicted; ſuch perſon ſhall not only be freed from any penalty for ſuch offence, if himſelf be an offender therein, but ſhall alſo have the third part of the forfeitures, if they do not exceed 150 *l.* and if they do exceed 150 *l.* then he ſhall have 50 *l.* and after conviction of the offender, he ſhall have a certificate from the judges, or juſtices of the peace before whom the conviction ſhall be, directed to the ſheriff or perſon who ſhall ſeize the goods, or levy the forfeiture, commanding him to pay the ſame. 3 *J. c.* 5. *ſ.* 1.

4. And conveyances made by recuſants to evade the penalties for ſaying or hearing maſs, ſhall be void. 29 *El. c.* 6. *ſ.* 1.

X. Penalties of 12 d. *a* ſunday, *and* 20 l. *a month, for not going to church.*

1. All perſons, having no lawful or reaſonable excuſe to be abſent, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where divine ſervice ſhall be performed, according to the liturgy and practice of the church of *England*, upon every *ſunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting to the poor for every offence 1 *s.* to be levied by the churchwardens by way of diſtreſs. 1 *El.*

c. 2.

c. 2. *ſ.* 14, 24. Except diſſenters qualified by the act of toleration, who reſort to ſome congregation of religious worſhip allowed by that act. 1 *W.* *c.* 18. *ſ.* 2, 16.

And he who is abſent from his own pariſh church, ſhall be put to prove where he went to church. 1 *Haw.* 13.

And one juſtice, on proof (in one month after default) by confeſſion, or oath of witneſs, may call the party before him; and if he ſhall not make ſufficient excuſe, and due proof thereof, to the ſatisfaction of the juſtice, ſuch juſtice ſhall give warrant to the churchwarden to levy 12 *d.* to the uſe of the poor of the pariſh for every default, by diſtreſs and ſale, rendring the overplus. For want of diſtreſs, commitment till paid. 3 *J.* *c.* 4. *ſ.* 27, 28.

2. Every perſon above the age of 16 years, who ſhall not repair to ſome church, chapel, or uſual place of common prayer, being convicted thereof before the judges of aſſize, or juſtices of the peace in their open quarter ſeſſions, ſhall forfeit 20 *l.* a month, one third to the king, one third to the maintenance of the poor of the pariſh, and of the houſes of correction and of impotent and maimed ſoldiers, as the lord treaſurer, chancellor, and chief baron of the exchequer ſhall order, and one third to him who ſhall ſue in any court of record. If not paid in 3 months after judgment, he ſhall be impriſoned till he pay, or conform himſelf to go to church. 23 *El.* *c.* 1. *ſ.* 5, 11. 29 *El.* *c.* 6. *ſ.* 7.

Note; Theſe two laſt ſtatutes, by inflicting 20 *l.* for a month's abſence, diſpenſe not with the forfeiture of 12 *d.* on the former ſtatutes for the abſence of one *ſunday*; for both may well ſtand together; and the 12 *d.* is immediately forfeited upon the abſence of each particular day. 1 *Haw.* 13.

3. And every offender in not repairing to church, being once convicted, ſhall pay into the exchequer at *Eaſter* or *Michaelmas* term which ſhall firſt happen after the conviction, 20 *l.* for every month contained in the indictment; and ſhall alſo afterwards, without any other indictment or conviction, pay into the exchequer at every *Eaſter* and *Michaelmas* term 20 *l.* for every month till he conform; except where the king may refuſe the ſame, and take two parts of the lands as hereafter is mentioned. 3 *J.* *c.* 4. *ſ.* 8.

4. And every conviction recorded, ſhall by the court be certified into the exchequer, and if default ſhall be made in any part of payment, the king may by proceſs take the goods,

goods, and two parts of the lands of the offenders. 3 *J. c.* 4. *ſ.* 9.

5. Alſo the king may refuſe the penalty of 20*l.* a month for not coming to church, and in lieu thereof may ſeize two parts of the offender's lands, and keep them till he conform. 3 *J. c.* 4. *ſ.* 10, 11.

6. And where ſeizure ſhall be made of two parts of the lands, for the penalty of 20*l.* a month, ſuch two parts ſhall, according to the extent thereof, go towards payment, but the third part ſhall not be extended or ſeized. And when the recuſant ſhall die, and the ſaid penalty not paid, the king ſhall keep the two parts, until the whole be thereby, or otherwiſe, paid. 1 *J. c.* 4. *ſ.* 5.

7. And every perſon who ſhall retain in his ſervice, or ſhall relieve, keep, or harbour in his houſe any ſervant, ſojourner, or ſtranger, who ſhall not repair to church, but ſhall forbear for a month together, not having reaſonable excuſe, ſhall forfeit 10*l.* for every month he ſhall continue in his houſe ſuch perſon ſo forbearing. And the ſeſſions may hear and determine the ſame. 3 *J. c.* 4. *ſ.* 32, 33, 36.

8. And conveyances made by recuſants to evade the penalties for not coming to church, ſhall be void. 29 *El. c.* 6. *ſ.* 1.

9. And the juſtices in ſeſſions ſhall have power to enquire, hear, and determine of all recuſants and offences for not repairing to church; and ſhall have power at the ſeſſions where an indictment is taken for ſuch offence, to make proclamation, by which it ſhall be commanded that the body of the offender ſhall be rendred to the ſheriff, bailiff, or gaoler, before the next ſeſſions: And if he ſhall not appear of record at the next ſeſſions, then upon ſuch default recorded, he ſhall ſtand convicted. 3 *J. c.* 4. *ſ.* 7.

10. And no indictment or other proceeding againſt recuſants ſhall be reverſed (unleſs they conform) for any want of form, nor by any thing but by direct traverſe to the point of not coming to church. 3 *J. c.* 4. *ſ.* 16.

11. But every perſon who ſhall uſually on *ſundays* have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall four times a year at leaſt go to the pariſh church or other common church or chapel, he ſhall not incur any penalty for not repairing to church. 23 *El. c.* 1. *ſ.* 12. And this alſo ſhall not extend to proteſtant diſſenters, who reſort to ſome place of religious worſhip allowed by the act of toleration. 1 *W. c.* 18.

12. And

12. And the churchwardens and conſtables ſhall (on pain of 20*l.*) preſent at the quarter ſeſſions once a year, the monthly abſence from church of all recuſants, and the names and ages of their children above nine years of age, and the names of their ſervants. And the preſentments ſhall be entred by the clerk of the peace without fee, on pain of 40*s.* And if the party preſented ſhall be indicted and convicted, ſuch churchwarden or conſtable ſhall have a reward of 40*s.* to be levied of the recuſant's goods by warrant of the juſtices in ſeſſions. 3 *J. c.* 4. *ſ.* 4, 5, 6.

XI. Regiſtring eſtates.

1. Every perſon being a popiſh recuſant, or papiſt, or educated in the popiſh religion, or whoſe parent or parents ſhall be a papiſt or papiſts, or who ſhall uſe or profeſs the popiſh religion, ſhall within ſix months after he ſhall be of the age of 21, take the oaths of the 1 *G. c.* 13. and make the declaration againſt popery of the 30 *C.* 2. in one of the courts at *Weſtminſter*, or the quarter ſeſſions; or in default thereof, ſhall within ſix months afterwards, and within ſix months after he ſhall come into the poſſeſſion of any lands, regiſter the ſame; where they lie; who is the poſſeſſor of them; what eſtate he hath in them; the yearly rent, if lett; if lett upon leaſe, who made it, what rent, what fine; the time when regiſtred; in a parchment book or roll to be kept by the clerk of the peace. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

2. And ſuch lands ſhall be regiſtred in the county, where the houſe thereupon ſtands. 3 *G. c.* 18. *ſ.* 3.

3. And his name ſhall be ſubſcribed to the regiſtry, in the preſence of two juſtices in open ſeſſions, by himſelf or his lawful attorney (the warrant of attorney to be proved by two witneſſes, and entred of record); and two juſtices ſhall ſubſcribe their names as witneſſes (on pain of 20*l.*) that the entry was duly made. And the clerk of the peace ſhall, on application made ten days at leaſt before the ſeſſions, enter the ſame before ſuch ſeſſions; who ſhall have 3*d.* for every 200 words of the regiſtry and entry of record, and for every copy thereof, and for any one comparing the ſame with the originals; and 4*d.* for every ſearch. And if he neglect or refuſe to do his duty herein, he ſhall forfeit his office. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

4. Perſons not qualifying, or not regiſtring, or not regiſtring truly, ſhall forfeit ſuch lands, or the value thereof, two thirds to the king, and one third to him who ſhall ſue

for the ſame at the common law, or in chancery. 1 *G. ſt.* 2. *c.* 55. *ſ.* 1.

5. But no action for any forfeiture for not regiſtring, or for regiſtring fraudulently, ſhall be brought after two years after the offence committed. 3 *G. c.* 18. *ſ.* 2.

XII. Inrolling deeds and wills.

1. No manors, lands, tenements, or hereditaments, or any intereſt therein, or rent or profit thereout, ſhall paſs, alter, or change from any papiſt, or perſon profeſſing the popiſh religion, by any deed or will, except ſuch deed within ſix months after date, and ſuch will within ſix months after the death of the teſtator, be inrolled in one of the courts of record at *Weſtminſter*, or within the county where they lie, by the *cuſtos rotulorum*, and two juſtices of the peace, and the clerk of the peace, or two of them at leaſt, whereof the clerk of the peace to be one. 3 *G. c.* 18. *ſ.* 6.

2. But leaſes made by papiſts to proteſtants, whereon the full yearly value, or the ancient or moſt accuſtomed yearly rent or more ſhall be reſerved, need not to be inrolled. 10 *G. c.* 4. *ſ.* 19.

3. And by the 28 *G.* 2. *c.* 10. ſuch deeds and wills ſhall be good, if they be inrolled before *Jan.* 1. 1756, if advantage hath not been taken of the default before *Jan.* 11. 1755. And there is generally the like clauſe of indemnity in ſome act of parliament every two or three years.

4. Alſo no purchaſe made for full and valuable conſideration, by and for the ſole benefit of any proteſtant, ſhall be avoided for or by reaſon that any deed or will, thro' which the title is derived, hath not been inrolled; ſo as no advantage was taken thereof before the purchaſe, and ſo as no decree or judgment hath been obtained for want of ſuch inrollment. 28 *G.* 2. *c.* 10.

XIII. Double taxes.

By the land tax acts, papiſts and reputed papiſts, being of 18 years of age, who ſhall not have taken the oaths of allegiance and ſupremacy, ſhall pay double land tax.

XIV. Papiſts not to come to court.

1. No popiſh recuſant convict ſhall come into the court or houſe where the king or his heir apparent ſhall be (unleſs commanded by the king or council); on pain of 100 *l.*

half to the king, and half to him who ſhall diſcover and ſue for the ſame in any court of record. 3 *J.* *c.* 5. *ſ.* 2.

2. And if any member of either houſe of parliament, not having taken the oaths of allegiance and ſupremacy, and made and ſubſcribed the declaration againſt popery, ſhall come into the king's preſence, or the court or houſe where he is (without licence from ſix of the privy council), he ſhall ſuffer as a popiſh recuſant convict, and ſhall be diſabled to hold any office, or to vote in either houſe of parliament, or to be plaintiff, guardian, executor, adminiſtrator, or to take any legacy or gift, and ſhall forfeit 500 *l.* to him who ſhall ſue. 30 *C.* 2. *ſt.* 2. *c.* 1.

XV. Not to come within ten miles of London.

1. All popiſh recuſants who ſhall come, dwell, or remain, within the city of *London*, or within ten miles thereof, who ſhall be indicted or convicted of ſuch recuſancy, or who ſhall forbear going to church to hear divine ſervice for three months, ſhall within ten days after ſuch indictment or conviction, depart from the ſaid city, and ten miles compaſs of the ſame; and ſhall alſo within the ſaid time deliver up their names to the lord mayor, if they dwell within the city or liberties thereof; and if they dwell in any other county, within ten miles of the city, they ſhall deliver up their names to the next juſtice; on pain of 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 4.

2. And for the better diſcovering of papiſts within ten miles of *London*, every juſtice in the neighbouring counties, ſhall cauſe to be arreſted and brought before him every ſuch perſon within the ſaid limits, not being a merchant foreigner, as are or are reputed to be papiſts (except ambaſſadors ſervants), and tender to him the declaration againſt popery of the 30 *C.* 2. which if he ſhall refuſe to make and ſubſcribe, and afterwards continue within ten miles of *London*, he ſhall ſuffer as a popiſh recuſant convict. The juſtice to certify ſuch ſubſcription, or refuſal, into the king's bench, or to the next quarter ſeſſions. 1 *W.* *c.* 9.

XVI. Papiſts confined to their habitations.

1. Every perſon above 16 years of age, being a popiſh recuſant, and having any certain place of abode, who being convicted for not repairing to ſome church, chapel, or uſual place of common prayer to hear divine ſervice there, but forbearing the ſame contrary to law, ſhall within 40

days next after the conviction (if he be within the realm, and not hindred by impriſonment, by command of the king or council, or by ſickneſs, and in ſuch caſe in 20 days after the removal of ſuch impediment) repair to his uſual dwelling, and ſhall not remove above five miles from thence, unleſs he be licenſed as is herein after directed, on pain of forfeiting his goods, and alſo to the king his lands during life, unleſs they be cuſtomary or copyhold, and then to the lord of the manor. 35 *El. c.* 2. *ſ.* 3, 5.

And it ſeemeth that theſe ſhall be computed according to the *Engliſh* manner, allowing 1760 yards to a mile, and that the ſame ſhall be reckoned not by ſtreight lines, as a bird or arrow may fly; but according to the neareſt and moſt uſual way. 1 *Haw.* 25.

2. Having repaired to their dwelling, they ſhall within 20 days notify their coming, and preſent themſelves, and deliver their true names in writing to the miniſter of the pariſh and to the conſtable, and the miniſter ſhall enter the ſame in a book. 35 *El. c.* 2. *ſ.* 6.

3. And, after, the miniſter and conſtable ſhall certify the ſame in writing to the next ſeſſions; and the clerk of the peace ſhall enter the ſame in the rolls of the ſeſſions. 35 *El. c.* 2. *ſ.* 7.

4. And if ſuch recuſant (not being a feme covert) have not lands of 20 marks a year, or goods worth above 40 *l.* and ſhall not conform in 3 months, being thereto required by the biſhop, or a juſtice of the peace, or the miniſter; he ſhall abjure the realm before two juſtices of the peace, or the coroner: who ſhall enter the ſame of record, and certify the ſame at the next aſſizes. And if he ſhall refuſe to abjure, or not depart, or return; he ſhall be guilty of felony without benefit of clergy. 35 *El. c.* 2. *ſ.* 8, 9, 10.

Abjure] The form whereof, according to the ancient books, is this: *This hear you, ſir coroner, that I* A. O. *of* ——— *in the county of* ——— *am a popiſh recuſant, and in contempt of the laws and ſtatutes of* England, *I have and do refuſe to come to their church: I do therefore, according to the intent and meaning of the ſtatute made in the 35th year of queen* Elizabeth, *late queen of this realm of* England, *abjure the realm of* England. *And I ſhall haſte me towards the port of* P. *which you have given and aſſigned to me, and that I ſhall not go out of the highway leading thither, nor return back again; and if I do, I will that I be taken as a felon of the king: And that at* P. *I will diligently ſeek for paſſage, and I will tarry there but one flood and ebb, if I can have paſſage; and unleſs I can have it in ſuch ſpace, I will go*

every day into the ſea up to my knees, aſſaying to paſs over. So help me god and his doom. Stam. 116. Mir. b. 1. Offic. Cor. 49.

5. But if ſuch perſon reſtrained ſhall be urged by proceſs, or be bound to appear in any of the king's courts, or be ſent for by the council, or be bound to render his body to the ſheriff on proclamation, he ſhall incur no penalty for removing for ſuch purpoſe. 35 *El. c.* 2. *ſ.* 13, 14.

6. Alſo, popiſh recuſants confined to their habitations by the 35 *El.* may be licenſed to remove,

(1) By the king.

(2) By three or more of the privy council, in writing under their hands; who may give licence to ſuch recuſant to travel out of the compaſs of five miles, for ſuch time as ſhall be contained in the licence, for their travelling, attending, and returning, and without any other cauſe to be expreſſed in the licence.

(3) If ſuch recuſant ſhall have neceſſary occaſion or buſineſs; then, upon licence in writing under the hands and ſeals of four of the next juſtices of the county or place, with the aſſent in writing of the biſhop; or of the lieutenant, or a deputy lieutenant of the county reſiding therein, under their hands and ſeals; in which licence ſhall be ſpecified both the cauſe of the licence, and the time how long the party licenſed ſhall be abſent in travelling, attending, and returning: In ſuch caſe, the perſon ſo licenſed may travel about ſuch his neceſſary buſineſs, and for ſuch time as ſhall be compriſed in the licence; he firſt taking oath before the ſaid four juſtices, or any of them, that he hath truly informed them of the cauſe of his journey, and that he ſhall not make any cauſeleſs ſtay. And ſuch perſon departing above five miles, not having ſuch licence, and not having taken ſuch oath, ſhall incur the penalty of the 35 *El.* abovementioned. 3 *J. c.* 5. *ſ.* 7.

XVII. Not to inherit, or take by deviſe.

If any perſon educated in the popiſh religion, or profeſſing the ſame, ſhall not within ſix months after he ſhall be 18 years of age, take the oaths of allegiance and ſupremacy, and ſubſcribe the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter ſeſſions, he ſhall (in reſpect of himſelf, but not of his heirs) be incapable to inherit or take any lands, by deſcent, deviſe, or limitation; but the next of kin, being a proteſtant, ſhall have the ſame. 11 & 12 *W. c.* 4. *ſ.* 4.

XVIII. Shall not purchaſe.

1. Every papiſt, or perſon making profeſſion of the popiſh religion, ſhall be diſabled to purchaſe any lands, or profits out of the ſame, in his own name, or in the name of any other to his uſe, or in truſt for him; but the ſame ſhall be void. 11 & 12 *W. c.* 4. *ſ.* 4.

2. But no ſale of any lands for a valuable conſideration by any perſon, being the reputed owner, or in poſſeſſion of the rents and profits thereof, to be made to and for a proteſtant purchaſer, ſhall be avoided on any pretence of diſability in the act of the 11 & 12 *W. c.* 4. and of the 1 *J. c.* 4. incurred by any perſon making ſuch ſale, or by or through whom the title ſhall be derived; unleſs before ſuch ſale, the perſon intitled to take advantage of ſuch diſability, ſhall have recovered the lands, or given notice of his claim to the purchaſer, or entred his claim at the quarter ſeſſions. 3 *G. c.* 18. *ſ.* 4. But the above ſtatute of the 11 & 12 *W.* ſhall continue, that papiſts ſhall not purchaſe. *ſ.* 5.

XIX. Shall not preſent to benefices.

1. A popiſh recuſant convict ſhall be diſabled to preſent, or grant any avoidance, to any eccleſiaſtical living, or nominate to any free ſchool, hoſpital, or donative. 3 *J. c.* 5. *ſ.* 18.

2. And whereas by the 1 *W. c.* 15. any two juſtices who ſhall know or ſuſpect or ſhall be informed, that any perſon is, or is ſuſpected to be a papiſt, ſhall tender to him the declaration of the 30 *C.* 2. and if he ſhall not appear before the ſaid juſtices, on notice to him given by warrant of the ſaid juſtices, or left at his uſual place of abode, or if he ſhall refuſe to make and ſubſcribe the declaration, they ſhall certify his name and place of abode at the next ſeſſions to be there recorded by the clerk of the peace; It is enacted by the 1 *W. c.* 26. *ſ.* 2. that every perſon ſo recorded, ſhall from the time of ſuch record, be diſabled to preſent or nominate to any benefice, free ſchool, hoſpital, or donative, as fully as if he were a popiſh recuſant convict.

3. And where any perſon ſhall be poſſeſſed of any right of preſentation or nomination as aforeſaid, *in truſt* for any papiſt or popiſh recuſant, who ſhall be convicted or diſabled by the 3 *J. c.* 5. or by the 1 *W. c.* 26. ſuch truſtee ſhall be

be diſabled to preſent or nominate, or to grant any avoidance thereof. 1 *W.* *c.* 26. *ſ.* 3.

4. Alſo, it is further enacted, that every papiſt, or perſon making profeſſion of the popiſh religion (that is, whether convicted by either of the former acts or not) and every child not being a proteſtant, under the age of 21, of every ſuch papiſt or perſon profeſſing the popiſh religion, and every mortgagee, truſtee, or perſon any ways intruſted, directly or indirectly, by or for any ſuch papiſt or perſon profeſſing the popiſh religion, or ſuch child as aforeſaid, whether ſuch truſt be declared by writing or not, ſhall be diſabled to preſent or nominate. 12 *An.* *ſt.* 2. *c.* 14. *ſ.* 1.

5. And the chancellor and ſcholars of the univerſity of *Oxford* ſhall preſent and nominate to the ſame, in the counties of *Oxford*, *Kent*, *Middleſex*, *Suſſex*, *Surrey*, *Hampſhire*, *Berkſhire*, *Buckinghamſhire*, *Glouceſterſhire*, *Worceſterſhire*, *Staffordſhire*, *Warwickſhire*, *Wiltſhire*, *Somerſetſhire*, *Devonſhire*, *Cornwall*, *Dorſetſhire*, *Herefordſhire*, *Northamptonſhire*, *Pembrokeſhire*, *Caermarthenſhire*, *Brecknockſhire*, *Monmouthſhire*, *Cardiganſhire*, *Montgomeryſhire*, the city of *London*, and other cities and towns within the ſaid counties:

And the chancellor and ſcholars of the univerſity of *Cambridge* ſhall preſent and nominate in the counties of *Eſſex*, *Hertfordſhire*, *Bedfordſhire*, *Cambridgeſhire*, *Huntingtonſhire*, *Suffolk*, *Norfolk*, *Lincolnſhire*, *Rutlandſhire*, *Leiceſterſhire*, *Derbyſhire*, *Nottinghamſhire*, *Shropſhire*, *Cheſhire*, *Lancaſhire*, *Yorkſhire*, *Durham*, *Northumberland*, *Cumberland*, *Weſtmorland*, *Radnorſhire*, *Denbighſhire*, *Flintſhire*, *Carnarvonſhire*, *Angleſeyſhire*, *Merionethſhire*, *Glamorganſhire*, and the cities and towns within the ſaid counties. 3 *J.* *c.* 5. *ſ.* 19, 20.

6. And if any truſtee, mortgagee, or grantee, of an avoidance, ſhall preſent or nominate to any ſuch living, free ſchool, or hoſpital, whereof the truſt ſhall be for any recuſant convict or diſabled, without giving notice in writing to the univerſity, in three months after the avoidance ſhall happen; he ſhall forfeit 500 *l.* to the univerſity. 1 *W.* *c.* 26. *ſ.* 4.

7. But the chancellors and ſcholars ſhall not preſent to any ſuch eccleſiaſtical living, any perſon who ſhall then have any other benefice with cure of ſouls; nor ſhall the perſon preſented be abſent from the ſame above 60 days in any one year. 1 *W.* *c.* 26. *ſ.* 5, 6.

8. And every *grant* of an eccleſiaſtical living, ſchool, hoſpital, or donative, by any papiſt or truſtee for him,

ſhall be void, unleſs made *bona fide* for a full and valuable conſideration to a proteſtant purchaſer. And alſo every *deviſe* thereof, with intent to ſecure the benefit thereof to the heirs or family of ſuch papiſt, ſhall be void. 11 *G.* 2. *c.* 17. *ſ.* 5.

XX. Shall not teach ſchool.

If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth; he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W. c.* 4. *ſ.* 3, 5.

XXI. Diſabled as to offices, law, phyſick.

1. No recuſant convict ſhall practiſe the common law, as a counſellor, clerk, attorney, or ſolicitor; nor ſhall practiſe the civil law, as advocate or proctor; nor practiſe phyſick, nor be an apothecary; nor ſhall be a judge, miniſter, clerk, or ſteward of or in any court, or keep any court, nor ſhall be regiſter or town clerk, or other miniſter or officer in any court; nor ſhall bear any office or charge, as captain, lieutenant, corporal, ſerjeant, ancient bearer, or other office in camp, troop, band, or company of ſoldiers; nor ſhall be captain, maſter, governor, or bear any office of charge of or in any ſhip, caſtle, or fortreſs; but be utterly diſabled for the ſame: and every perſon offending herein, ſhall forfeit 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J. c.* 5. *ſ.* 8.

2. And no popiſh recuſant convict, nor any having a wife being a recuſant convict, ſhall exerciſe any publick office, unleſs ſuch huſband, and his children above 9 years old, and his ſervants, go to church and conform. 3 *J. c.* 5. *ſ.* 9.

XXII. Not to be executor or adminiſtrator.

A popiſh recuſant convict ſhall be diſabled to be executor or adminiſtrator. 3 *J. c.* 5. *ſ.* 22.

XXIII. Not to be guardian.

A popiſh recuſant convict ſhall not have the cuſtody of any child as guardian: but the wardſhip ſhall go to the next of kin not being a recuſant, to whom the eſtate cannot lawfully deſcend. 3 *J. c.* 5. *ſ.* 22, 23.

XXIV. Shall

XXIV. Shall be deemed excommunicate.

1. Every popiſh recuſant convict ſhall ſtand and be reputed to all intents and purpoſes diſabled, as a perſon excommunicated, and as if he had been ſo denounced by the laws of the realm. 3 *J.* *c.* 5. *ſ.* 11.

2. And on proceſs to the ſheriff, for apprehending a popiſh recuſant excommunicated, he may break open a houſe, or raiſe the power of the county. 3 *J.* *c.* 4. *ſ.* 35.

XXV. Popiſh baptiſm.

Every popiſh recuſant ſhall within one month next after the birth of any child, cauſe it to be baptized by a lawful miniſter in open church; or if it is infirm, to be baptized by a lawful miniſter; on pain of 100 *l.* one third to the king, one third to him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 14.

XXVI. Popiſh marriage.

1. Every man, being a popiſh recuſant convict, who ſhall be married otherwiſe than in ſome open church or chapel, and otherwiſe than according to the orders of the church of *England*, by a miniſter lawfully authorized, ſhall be utterly diſabled and excluded to have any eſtate of freehold into the lands of his wife, as tenant by the curteſy of *England:* And if ſhe have no lands, he ſhall forfeit 100 *l.* half to the king, and half to him who ſhall ſue. 3 *J.* *c.* 5. *ſ.* 13.

2. And every woman, being a popiſh recuſant convict, who ſhall be married in other form than as aforeſaid, ſhall be utterly excluded and diſabled, not only to claim any dower or jointure, but alſo her widow's eſtate and frankbank in her huſband's cuſtomary lands, and be diſabled to have any part of his goods. 3 *J.* *c.* 5. *ſ.* 13.

3. But by the 26 *G.* 2. *c.* 33. After *March* 25. 1754. if they ſhall be married any where in *England*, other than in a church or publick chapel (unleſs by ſpecial licence from the archbiſhop of *Canterbury*), or without publication of banns, or licence, the marriage ſhall be null and void.

XXVII. Popiſh

XXVII. Popiſh burial.

If any popiſh recuſant, not being excommunicate, ſhall be buried in any place, other than the church or churchyard, or not according to the eccleſiaſtical laws; the executors or adminiſtrators of every ſuch perſon ſo buried, ſhall forfeit 20*l.* one third to the king, one third to the informer or him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 15.

XXVIII. Armour.

1. Any two juſtices, who ſhall know or ſuſpect, or ſhall be informed, that any perſon is or is ſuſpected to be a papiſt, may and ſhall tender to him the declaration in the act of the 30 *C.* 2. and if he ſhall not appear, after notice by warrant under hand and ſeal given to him, or left at his uſual place of abode; or ſhall not make and ſubſcribe the declaration; he ſhall be diſabled to have or keep in his houſe or elſewhere, or in the poſſeſſion of any other to his uſe, any arms, gunpowder or ammunition, except ſuch weapons as ſhall be allowed by the ſeſſions for the defence of his houſe or perſon. And any two juſtices may by warrant authorize in the day time any perſon, with the conſtable's aſſiſtance, to ſearch ſuch perſon's houſe for the ſame, and ſeize them for the uſe of the king. And the ſaid juſtices ſhall deliver the ſame in open court at the next ſeſſions for the uſe aforeſaid; where alſo, they ſhall certify the name and place of abode of every perſon ſo ſubſcribing, or not ſubſcribing. 1 *W.* *c.* 15. *ſ.* 2, 3, 4.

2. And notwithſtanding the taking away ſuch armour, gunpowder, and munition, the ſaid popiſh recuſant ſhall be charged with the providing and maintaining of horſe, and other armour, and munition, as other ſubjects, according to their ſeveral abilities. 3 *J.* *c.* 5. *ſ.* 29.

3. And every ſuch perſon, not diſcovering and delivering them up to ſome juſtice in ten days after default in not appearing, or not ſubſcribing as aforeſaid, or hindring the ſeizure, ſhall be committed to gaol by any two juſtices for three months, and ſhall forfeit the arms, and pay treble value of them to the king, to be appraiſed by the juſtices at the next ſeſſions. 1 *W.* *c.* 15. *ſ.* 5.

4. And every other perſon who ſhall conceal, or knowing thereof, not diſcover to a juſtice ſuch arms or ammunition, or ſhall hinder the ſeizing thereof, ſhall be committed to gaol by two juſtices for three months, and ſhall forfeit

forfeit to the king the treble value of the arms. 1 *W.* *c.* 15. *ſ.* 6.

5. And every perſon who ſhall diſcover ſuch arms or ammunition, ſo as they ſhall be ſeized, ſhall have a reward equal to the value thereof ordered by the ſeſſions out of the goods of the offender, to be levied by diſtreſs. 1 *W.* *c.* 15. *ſ.* 7.

XXIX. Horſes.

1. Every papiſt making default in not appearing, or not ſubſcribing (as in the former ſection concerning armour), ſhall not have or keep in his poſſeſſion, or in the poſſeſſion of any other to his uſe, or at his diſpoſition, any horſe above the value of 5 *l.* to be ſold. And two juſtices may authorize any perſon, with the conſtable's aſſiſtance, to ſeize all ſuch horſes for the king's uſe. 1 *W.* *c.* 15. *ſ.* 9.

2. And if any perſon ſhall conceal, or aſſiſt in concealing, any ſuch horſe, he ſhall be committed by warrant of two juſtices to priſon for three months, and ſhall forfeit to the king treble the value of ſuch horſe. 1 *W.* *c.* 15. *ſ.* 10.

XXX. Popiſh wife.

1. If any married woman, being a popiſh recuſant convict, ſhall not conform in three months, ſhe ſhall be committed to priſon, by one of the privy council, or by the biſhop, if ſhe be a baroneſs; or, if under that degree, by two juſtices (1 *Q.*) until ſhe ſhall conform, unleſs her huſband ſhall pay to the king for her offence for every month 10*l.* or elſe the third part of his lands, ſo long as ſhe ſhall continue out of priſon. 7 *J.* *c.* 6. *ſ.* 28.

2. A wife being a popiſh recuſant convict, her huſband not being ſo, ſhall forfeit to the king two parts of her jointure and dower, ſhall not be executrix or adminiſtratrix of her huſband, nor ſhall have any ſhare of his goods and chattels. 3 *J.* *c.* 5. *ſ.* 10.

3. But if ſhe hath been married (out of *England*) otherwiſe than according to the form of the church of *England*, ſhe ſhall be diſabled to claim any dower or jointure, or widow's eſtate, of her huſband's lands; and ſhall have no part of his goods. 3 *J.* *c.* 5. *ſ.* 13. And if in *England*, the marriage ſhall be void. 26 *G.* 2. *c.* 33.

XXXI. Heir

XXVII. Popiſh burial.

If any popiſh recuſant, not being excommunicate, ſhall be buried in any place, other than the church or churchyard, or not according to the eccleſiaſtical laws; the executors or adminiſtrators of every ſuch perſon ſo buried, ſhall forfeit 20*l.* one third to the king, one third to the informer or him who ſhall ſue, and one third to the poor. 3 *J.* *c.* 5. *ſ.* 15.

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2. And notwithſtanding the taking away ſuch armour, gunpowder, and munition, the ſaid popiſh recuſant ſhall be charged with the providing and maintaining of horſe, and other armour, and munition, as other ſubjects, according to their ſeveral abilities. 3 *J.* *c.* 5. *ſ.* 29.

3. And every ſuch perſon, not diſcovering and delivering them up to ſome juſtice in ten days after default in not appearing, or not ſubſcribing as aforeſaid, or hindring the ſeizure, ſhall be committed to gaol by any two juſtices for three months, and ſhall forfeit the arms, and pay treble value of them to the king, to be appraiſed by the juſtices at the next ſeſſions. 1 *W.* *c.* 15. *ſ.* 5.

4. And every other perſon who ſhall conceal, or knowing thereof, not diſcover to a juſtice ſuch arms or ammunition, or ſhall hinder the ſeizing thereof, ſhall be committed to gaol by two juſtices for three months, and ſhall forfeit

forfeit to the king the treble value of the arms. 1 *W.* *c.* 15. *ſ.* 6.

5. And every perſon who ſhall diſcover ſuch arms or ammunition, ſo as they ſhall be ſeized, ſhall have a reward equal to the value thereof ordered by the ſeſſions out of the goods of the offender, to be levied by diſtreſs. 1 *W.* *c.* 15. *ſ.* 7.

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2. A wife being a popiſh recuſant convict, her huſband not being ſo, ſhall forfeit to the king two parts of her jointure and dower, ſhall not be executrix or adminiſtratrix of her huſband, nor ſhall have any ſhare of his goods and chattels. 3 *J.* *c.* 5. *ſ.* 10.

3. But if ſhe hath been married (out of *England*) otherwiſe than according to the form of the church of *England*, ſhe ſhall be diſabled to claim any dower or jointure, or widow's eſtate, of her huſband's lands; and ſhall have no part of his goods. 3 *J.* *c.* 5. *ſ.* 13. And if in *England*, the marriage ſhall be void. 26 *G.* 2. *c.* 33.

XXXI. Heir

XXXI. Heir of a popiſh recuſant.

If the heir of a popiſh recuſant ſhall be under 16, at the death of ſuch recuſant, and ſhall after ſuch age become recuſant, he ſhall be charged with the penalties happening him by reaſon of ſuch his anceſtor's recuſancy, until ſuch time as he ſhall conform. 7 *J. c.* 4. *ſ.* 3, 4.

XXXII. Proteſtant children of papiſts.

If any popiſh parent, in order to the compelling his child being a proteſtant to change his religion, ſhall refuſe to allow him a fitting maintenance, the lord chancellor may make order therein. 11 & 12 *W. c.* 4. *ſ.* 7.

XXXIII. Oaths.

1. By the toleration act, if any perſon being required by a juſtice of the peace, ſhall refuſe to take the oaths of allegiance and ſupremacy, and to make and ſubſcribe the declaration againſt popery of the 30 *C.* 2. he ſhall be committed by the ſaid juſtice to priſon; and, at the next ſeſſions, if he ſhall again refuſe to make and ſubſcribe the ſaid declaration, he ſhall be deemed and ſuffer as a popiſh recuſant convict. *ſ.* 12.

2. And by the 1 *G. ſt.* 2. *c.* 13. Two juſtices may ſummon any perſon whom they ſhall ſuſpect to be diſaffected, by writing under their hands and ſeals to appear before them at a time prefixed, to take the oaths of allegiance, ſupremacy, and abjuration: which ſummons ſhall be ſerved on ſuch perſon, or left at his dwelling houſe, or uſual place of abode, with one of the family there; and if ſuch perſon ſhall neglect or refuſe to appear, then, on due proof made upon oath of ſerving the ſaid ſummons, they ſhall certify the ſame to the next ſeſſions, to be there recorded: And if ſuch perſon ſhall neglect or refuſe to appear and take the oaths at the ſaid ſeſſions (his name being publickly read at the firſt meeting of the ſaid ſeſſions), he ſhall be taken and adjudged a popiſh recuſant convict. And the ſame ſhall be from thence certified by the clerk of the peace, into the chancery, or king's bench, to be there recorded. *ſ.* 10, 11.

XXXIV. Miniſter to preſent papiſts.

Miniſters ſhall preſent popiſh recuſants to the biſhop, every year before *June* 24. *Can.* 114.

XXXV. Re-

XXXV. Recuſants conforming.

1. A recuſant conforming ſhall be diſcharged of the penalties which he might otherwiſe ſuſtain in reſpect of his recuſancy. 1 *J.* *c.* 4. *ſ.* 2.

2. And by the 11 *G.* 2. *c.* 17. Papiſts conforming to the proteſtant religion, and taking the oaths, and ſubſcribing the declaration of the 30 *C.* 2. in the chancery, king's bench, or quarter ſeſſions, (to be there recorded,) ſhall have their eſtates freed of the diſabilities incurred before ſuch conforming. *ſ.* 1, 2, 3, 4.

3. And a recuſant convicted having conformed, ſhall at leaſt once a year receive the ſacrament in the pariſh church, on pain of forfeiting for the firſt year 20*l.* for the ſecond 40*l.* and for every year after 60*l.* half to the king, and half to him who ſhall ſue in the courts at *Weſtminſter*, or at the aſſizes, or ſeſſions. 3 *J.* *c.* 4. *ſ.* 2, 3.

And at the ſeſſions where an indictment for ſuch offence is taken, the juſtices ſhall have power to make proclamation, by which it ſhall be commanded that the body of the offender ſhall be rendred to the ſheriff, bailiff, or gaoler, before the next ſeſſions; And if he ſhall not appear of record next ſeſſions, then upon ſuch default recorded, he ſhall ſtand convicted. *ſ.* 7.

And no indictment or other proceeding ſhall be reverſed for want of form, nor by any thing but by direct traverſe to the point of not receiving the ſacrament. *ſ.* 16.

But the huſband ſhall not be charged with a penalty for the wife's offence in not receiving the ſacrament; nor ſhall the wife be chargeable for not receiving during her marriage. *ſ.* 40.

XXXVI. Eccleſiaſtical juriſdiction.

It is generally provided in the foregoing acts, that nothing therein ſhall take away or abridge the authority or juriſdiction of eccleſiaſtical cenſures.

Note; The oaths and declarations abovementioned, are inſerted at large in the title **Oaths.**

Poſſe comitatus. See **Arreſt.**

Poſt.

Poſtmaſter's oath.

1. NO perſon ſhall be capable of exerciſing any employment relating to the poſt office, or any branch thereof, or be any way concerned in receiving, ſorting, or delivering of letters, before he ſhall have taken the following oath, before a juſtice of the peace where he reſides:

I A. B. *do ſwear, that I will not wittingly, willingly, or knowingly open, detain, or delay any letter or letters, packet, or packets, which ſhall come into my hands, power, or cuſtody, by reaſon of my employment in or relating to the poſt office; except by the conſent of the perſon or perſons to whom the ſame is or ſhall be directed, or by an expreſs warrant in writing under the hand of one of the principal ſecretaries of ſtate for that purpoſe; or except in ſuch caſes, where the party or parties to whom ſuch letter or letters, packet or packets ſhall be directed, or who is or are chargeable with the payment of the port or ports thereof, ſhall refuſe or neglect to pay the ſame, and except ſuch letters or packets, as ſhall be returned for want of true directions, or when the party or parties to whom the ſame is or ſhall be directed, cannot be found: And that I will not any way imbezil any ſuch letter or letters, packet or packets, as aforeſaid.* 9 An. c. 10. ſ. 41.

And if any perſon ſhall do any thing contrary to the ſaid oath, he ſhall forfeit 20 *l.* and his office. *ſ.* 40.

Meaſurer's oath.

2. And perſons appointed to meaſure the poſt roads, ſhall be ſworn to perform the ſame, according to the beſt of their ſkill and judgment, before a juſtice of the peace, who ſhall make a certificate thereof in writing, to be entred in the general poſt office, without fee. *ſ.* 12.

Money for poſtage how to be levied.

3. All ſums not exceeding 5 *l.* that ſhall be due from any perſon for letters, or which ſhall be received for the carriage of letters without anſwering the ſame to the receiver general, ſhall be recovered before juſtices of the peace in the ſame manner as ſmall tithes: And ſuch debt ſhall be preferable in payment before any debt to any private perſon. *ſ.* 30.

And the rates or prices for the carriage of letters ſhall be according to the ſeveral rates and ſums following:

For every ſingle letter not above 80 miles from the general poſt office, 3 *d.* Above 80 miles, 4 *d.* And for every letter directed on board, or from on board any ſhip, 1 *d.* more.

Within

Within the limits of the penny poſt, 1 *d.* (at putting in, and 1 *d.* at delivery, 4 *G.* 2. *c.* 33.)

From *Edinburgh*, *Dumfries*, *Dublin*; to *London*, 6 *d.*

From *France*, *Holland*, *Hamburgh*, 10 *d.*

From *Italy*, *Sicily*, *Germany*, *Switzerland*, *Denmark*, *Sweden*, and all parts of the North (thro' *Holland)*; and from *New York*, 1 *s.*

From *Italy*, *Sicily*, *Turkey*; through *France*, 1 *s.* 3 *d.*

From *Spain*, *Portugal*, *Jamaica*, *Barbadoes*, *Antegoa*, *Montſerrat*, *Nevis*, *St. Criſtophers*, 1 *s.* 6 *d.*

And a double letter ſhall pay double, and an ounce ſhall pay four times the price of a ſingle letter. 9 *An. c.* 10. *ſ.* 6.

And bills of exchange wrote on the ſame piece of paper with a letter, and ſeveral letters to ſeveral perſons wrote on the ſame piece of paper, ſhall pay as ſo many diſtinct letters. 6 *G. c.* 21. *ſ.* 51.

And writs or other proceedings at law, incloſed, or writ on the ſame piece of paper with a letter, ſhall pay as ſo many diſtinct letters. 26 *G.* 2. *c.* 13. *ſ.* 6.

But merchants accounts not exceeding one ſheet, bills of exchange, invoices, bills of lading (ſent or brought over ſea, 6 *G. c.* 21. *ſ.* 52.) ſhall be allowed without rate in the price of the letters. 9 *An. c.* 10. *ſ.* 13.

But patterns or ſamples of goods, or pieces of any thing, tho' not paper, incloſed in a letter, or affixed thereto, if under an ounce weight, ſhall pay as a double letter. 26 *G.* 2. *c.* 13. *ſ.* 7.

4. And none but the poſtmaſter ſhall carry letters; on pain of 5 *l.* for every offence, and 100 *l.* a week beſides; half to the king, and half (with coſts) to him that ſhall ſue in any court of record. 9 *An. c.* 10. *ſ.* 17, 19. None but the poſtmaſter to carry letters.

Except letters carried *gratis* by carriers or ſhip maſters with goods, inſtruments out of any court, and letters ſent by friends in their journey, or by a ſpecial meſſenger, 9 *An. c.* 10. *ſ.* 2.

Pound-breach. See Diſtreſs.

Powder (for the hair). See Exciſe.

Præmunire.

What it is.

1. PRÆMUNIRE is ſo called from a word in the writ, *Præmunire facias præfatum A. B. quod tunc ſit coram nobis, &c.* where *præmunire* is uſed for *præmonere*, to warn the perſon to appear, as is directed in the ſtatute of the 27 *Ed.* 3. *c.* 1. hereafter following. 1 *Inſt.* 129.

Power of juſtices of the peace therein.

2. Notwithſtanding that *præmunire* is not within the letter of the commiſſion of the peace, yet inaſmuch as it is againſt the peace of the king and of the realm, any juſtice of the peace may, either on his own knowledge, or the complaint of others, cauſe any perſon to be apprehended for ſuch offence; and he may take the examination of the perſon ſo apprehended, and the information of all who can give material evidence againſt him, and put the ſame in writing; and bind over the witneſſes to the king's bench or gaol delivery; and certify his proceedings to the ſame court to which he ſhall bind over ſuch informers. 2 *Haw.* 39. *Hale's Pl.* 168.

Impeaching judgments in the king's courts, a præmunire.

3. By the 27 *Ed.* 3. *c.* 1. called the ſtatute of Proviſors, They who ſhall draw any out of the realm in plea, whereof the cognizance pertaineth to the king's court, or which do ſue in any other court, to defeat or impeach the judgments given in the king's court, ſhall have a day, containing the ſpace of two months, by warning to be made to them, by the ſheriffs or other officers, to appear to anſwer in their proper perſons for the contempt: And if they come not at the ſaid day in their proper perſon to be at the law, they, their procurators, attornies, executors, notaries, and maintainers, ſhall from that day forth be put out of the king's protection, and their lands, goods, and chattels forfeit to the king, and their bodies whereſoever they may be found ſhall be taken and impriſoned, and ranſomed at the king's will. And upon the ſame a writ ſhall be made, to take them by their bodies, and to ſeize their goods, lands, and poſſeſſions, into the king's hands. And if it be returned, that they be not found, they ſhall be put in exigent, and outlawed.

Suing out foreign proceſs, a præmunire.

4. And by the 16 *R.* 2. *c.* 5. commonly called the ſtatute of *præmunire*, and to which the ſeveral ſubſequent ſtatutes do refer; both thoſe who purſue, or cauſe to be purſued, in the court of *Rome*, or elſewhere, any proceſſes or inſtruments, or other things whatſoever which touch the king, againſt him, his crown and regality, or his realm; and alſo thoſe who ſhall bring, receive, notify, or execute them;

them; and their fautors and abettors, ſhall be out of the king's protection; and their lands and tenements, goods and chattels, forfeit to the king; and they ſhall be attached by their bodies, if they may be found, and brought before the king and his council, there to anſwer; or proceſs ſhall be made againſt them by *præmunire facias*, in manner as it is ordained in other ſtatutes of proviſors.

And in theſe two ſtatutes, as above recited, are contained the pains and penalties of what is called a præmunire.

Suing for temporal matters in the ſpiritual court, a præmunire.

5. And ſince theſe acts it hath been adjudged, that a ſuit in the eccleſiaſtical court (as for debt) was in caſe of præmunire. And that a perſon ſuing in the eccleſiaſtical court, for the forgery of a will, doth incur the danger of a præmunire; becauſe the party grieved might have his remedy by the common law. Alſo judgment againſt the defendant was given in a præmunire, for ſuing for tithes in the eccleſiaſtical court, alledging the ſame to be ſevered from the nine parts. 3 *Inſt.* 120, 121. But it ſeemeth, that a ſuit in that court, for a matter which appears not by the libel it ſelf, but only by the defendant's plea, or other matter ſubſequent, to be of temporal cognizance, is not within the ſtatute; becauſe it appears not that either the plaintiff or judge knew it to be ſo. 1 *Haw.* 51, 52.

Refuſing to elect or conſecrate a biſhop.

6. By the 25 *H.* 8. *c.* 20. Refuſing to elect or conſecrate the perſon nominated by the king to a biſhoprick, is made a præmunire.

Suffragans exceeding their commiſſion.

7. By the 26 *H.* 8. *c.* 14. No ſuffragan ſhall exerciſe any juriſdiction, otherwiſe than by the biſhop's commiſſion, on pain of a præmunire.

Delaying a ſuit on the ſtatute of monopolies.

8. To delay a ſuit, on the ſtatute of monopolies, 21 *J.* *c.* 3. ſhall be a præmunire. *ſ.* 12.

Affirming that the parliament can make laws without the king.

9. By the 13 *C.* 2. *c.* 1. To affirm maliciouſly or adviſedly, by ſpeaking or writing, that both or either houſes of parliament have a legiſlative power without the king, is a præmunire.

Sending priſoners out of the realm.

10. By the 31 *C.* 2. *c.* 2. No ſubject ſhall be ſent a priſoner out of the realm, on pain of a præmunire.

Affirming that the pretender hath any right to the crown.

11. By the 6 *An.* *c.* 7. If any perſon ſhall maliciouſly and directly by preaching, teaching, or adviſed ſpeaking affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than as by the acts of parliament, he ſhall incur a præmunire.

Other præmunires.

12. The offences above ſpecified are ſuch as do not fall in with the other titles of this book. Other offences incurring a præmunire, are inſerted under the titles to which they do more properly belong; as in the titles, *Oaths*, *Gunpowder*; and eſpecially in the title *Popery*, under which there

there are many offences of this kind, occaſioned by the papal incroachments from time to time in this realm.

Judgment in præmunire.

13. The judgment in præmunire is, that the defendant *ſhall be from thenceforth out of the king's protection, and his lands and tenements, goods and chattels forfeited to the king, and that his body ſhall remain in priſon at the king's pleaſure.* 1 Inſt. 129.

Out of the king's protection] So odious was this offence formerly, that a man who was attainted of the ſame, might have been ſlain by any one without danger of law: becauſe it was provided by law, that a man might do to him as to the king's enemy, and a man may lawfully kill an enemy: and therefore by the 5 *El. c.* 1. it is enacted, that it ſhall not be lawful for any one to ſlay any perſon attainted in or upon a præmunire. 1 *Inſt.* 130.

But he is ſo far out of the king's protection, that he is diſabled to bring an action for any injury whatſoever. And no one, knowing him guilty, can with ſafety give him aid, comfort, or relief. 1 *Inſt.* 129, 130. 1 *Haw.* 55.

And Mr. *Hawkins* ſays it has been queſtioned, whether he hath a right to demand ſurety of the peace. But *Lambard* and *Dalton*, which are the authorities he cites for it, do incline to think that he hath ſuch right. *Lambard* alledges for it the ſtatute of the 5 *El.* abovementioned; and *Dalton* aſſerts it without doubting. *Lamb.* 80. *Dalt.* 272. 1 *Haw.* 126.

Lands and tenements——forfeited] Yet tenant in tail ſhall only forfeit lands during life: for albeit the ſtatute of the 16 *R.* 2. *c.* 5. enacteth, that lands and tenements ſhall be forfeited, that muſt be underſtood of ſuch an eſtate as he may lawfully forfeit, and that is, during his own life. 1 *Inſt.* 130.

Corruption of blood.

14. Attainder in præmunire worketh no corruption of blood. 1 *Inſt.* 391.

Preſentment.

A Preſentment is that which the grand jury find and preſent to the court, without any indictment delivered to them; which is afterwards reduced into the form of an indictment, and in nothing elſe differs from an indictment.

There are other preſentments of churchwardens, conſtables, ſurveyors of the highways, and juſtices of the peace; all which may be ſeen under their proper titles.

Priſon and priſoner. See **Gaol.**

Priſon-breaking.

IT ſeemeth that at the common law all priſon breaches were felonies, if the party were lawfully in cuſtody for any cauſe whatſoever. 2 *Haw.* 123.

But by the following ſtatute, which is called the ſtatute *de frangentibus priſonam*, the ſeverity of the common law is moderated; in the explication of which ſtatute, will be contained the whole learning relating to this ſubject.

The ſtatute is this: *Concerning priſoners which break priſon, the king willeth and commandeth, that none that breaketh priſon ſhall have judgment of life or member, for breaking of priſon only, except the cauſe for which he was taken and impriſoned did require ſuch judgment, if he had been convict thereupon, according to the law and cuſtom of the realm.* 1 Ed. 2. ſt. 2.

Concerning priſoners which break] Therefore if the priſon be broken by a ſtranger, and not by the priſoner, or by his procurement, this is no felony in the priſoner. *Hale's Pl.* 108.

Which break priſon] It ſeems clear, that any place whatſoever, wherein a perſon under a lawful arreſt for a ſuppoſed crime, is reſtrained of his liberty, whether in the ſtocks, or ſtreet, or in the common gaol, or the houſe of a conſtable, or private perſon, is properly a *priſon* within this ſtatute; for impriſonment is nothing elſe but a reſtraint of liberty. 2 *Haw.* 124.

And therefore this extendeth as well to a priſon in law, as to a priſon in deed. 2 *Inſt.* 589.

But there muſt be an actual *breaking*; for if the door be open and he goes out, it is not felony, but a miſdemeanor only. 2 *Inſt.* 589. 2 *Haw.* 125.

But if the priſon be fired without the privity of the priſoner, he may lawfully break it to ſave his life. *Hale's Pl.* 108.

Alſo it ſeems that no breach of priſon will amount to felony, unleſs the priſoner eſcape. 2 *Haw.* 125.

That none that breaketh priſon ſhall have judgment of life or member] That is, ſhall be guilty of felony. But nevertheleſs he is ſtill puniſhable as for a high miſpriſion, by fine and impriſonment; for it cannot be thought the meaning of the ſtatute, in ordaining that ſuch offences ſhall not be puniſhed as capital ones, to intend, that they ſhall not be puniſhed at all. 2 *Haw.* 128.

Nevertheleſs, by the 3 *Ed.* 1. *c.* 15. Thoſe who have broken priſon are not *bailable* by juſtices of the peace; and that for two reaſons: 1. Becauſe it carries a preſumption of guilt. And, 2. Becauſe it is a ſuperadded offence to the former for which they ſtood committed. 2 *H. H.* 133.

Except the cauſe for which he was taken and impriſoned, did require ſuch judgment] This is to be intended of a *lawful* cauſe; and therefore *falſe impriſonment* is not within this act. 2 *Inſt.* 590.

Impriſonment is a reſtraint of a man's liberty under the cuſtody of another, by lawful warrant, in deed, or in law. Lawful warrant is, either when the offence appeareth by matter of record, as when the party is taken upon an indictment; or when it doth not appear by matter of record, as when a felony is done, and the offender by a lawful *mittimus* is committed to gaol for the ſame: But between theſe two caſes there is a great diverſity; for in the firſt caſe, whether any felony were committed or no, if the offender be taken by force of a *capias*, the warrant is lawful, and if he break priſon it is felony, altho' no felony were committed; but in the other caſe, if no felony be done at all, and yet he is committed to priſon for a ſuppoſed felony, and break priſon, this is no felony, for there is no *cauſe*. 2 Inſt. 590.

So that the cauſe muſt be juſt, and not feigned, for things feigned require no judgment: Thus if a man give another a mortal wound, for which he is committed to priſon, and breaketh priſon, and the other dieth of the wound within the year, this death hath relation to the ſtroke; but becauſe relations are but fictions in law, and fictions are not here intended, this priſon-breaking is not felony. 2 *Inſt.* 591.

So that the offence for which the party was impriſoned, muſt be a capital one at the time of the offence, and not become ſuch by a matter ſubſequent. 2 *Haw.* 126.

And the cauſe muſt be expreſſed in the *mittimus*, altho' not ſo certainly as in an indictment, yet with ſuch convenient certainty as it may appear judicially that the offence requireth ſuch judgment; as, not for felony generally,

but for felony in ſtealing ſuch a horſe, and the like. 2 *Inſt.* 591.

But if the offence for which the party is committed, be ſuppoſed in the *mittimus* to be of ſuch a nature as requires a capital judgment, yet if in the event it be found to be of an inferior nature, and not to require ſuch a judgment, it ſeems difficult to maintain, that the breaking of the priſon or a commitment for it can be felony; for the words of the ſtatute are, *except the cauſe for which he was taken and impriſoned did require ſuch judgment*; and here it appears, that the offence, which is the cauſe of his impriſonment, doth not require ſuch a judgment. 2 *Haw.* 126.

But if a man be committed by lawful warrant, for *ſuſpicion* of felony done, if he break priſon, he may be indicted for that eſcape, albeit the commitment be for ſuſpicion of felony, and yet no judgment can be given againſt him for ſuſpicion, but for the felony it ſelf, whereof he is ſuſpected. 2 *Inſt.* 592.

And an indictment that ſuch a perſon *feloniouſly broke the priſon* generally, is not good; but it ought to rehearſe the ſpecialty of the matter, that he being impriſoned for ſuch or ſuch a felony, broke the priſon. 2 *Inſt.* 591.

But if the party be only arreſted for, and in his *mittimus* charged with a crime which doth not require judgment of life or member, as petit larceny, or homicide by ſelf defence or by miſadventure, and the offence be in truth no greater than the *mittimus* doth ſuppoſe it to be, it is clear, from the expreſs words of the ſtatute, that a breaking of the priſon cannot amount to felony. 2 *Haw.* 126.

But if a felony be made by a ſubſequent ſtatute, and an offender is committed thereupon; if he breaks priſon, it is felony. For ſince all breaches of priſon were felonies by the common law, which is reſtrained by this ſtatute in reſpect only of impriſonment for offences not capital; when an offence becomes capital, it is as much out of the benefit of the ſtatute, as if it had always been ſo. *Ha. Pl.* 108. 2 *Haw.* 126.

Alſo it is ſaid, that the party may be arraigned for priſon-breaking, before he be convicted of the crime for which he was impriſoned; for that it is not material whether he were guilty of ſuch crime or not; for the words of the ſtatute are, *for which he was taken and impriſoned.* 2 Haw. 127.

But if he is firſt indicted and acquitted of the principal felony, he ſhall not be indicted for the breach of priſon afterwards; for it being cleared that he was not guilty of the felony, he is in law as a perſon never committed for

felony, and ſo his breach of priſon is no felony. 1 *H. H.* 612.

But the gaoler ſhall not be puniſhed as a felon for the party's breach of priſon, unleſs he voluntarily conſented to it; but it ſeems to be a negligent eſcape in the gaoler, for which he may be puniſhed by fine and impriſonment, becauſe there wanted either that due ſtrength in the gaol, or that due vigilance in the gaoler or his officers, that ſhould have prevented it: and if gaolers might not be puniſhed for this as a negligent eſcape, they would be careleſs either to ſecure their priſoners, or to retake them that eſcape. 1 *H. H.* 601.

And therefore if a criminal endeavouring to break the gaol, aſſault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71.

Indictment for priſon-breaking, by eſcaping from a conſtable.

THE *jurors for our lord the king upon their oath preſent, that* A. C. *late of* ——— *yeoman, conſtable of our ſaid lord the king in and for the town of* ——— *in the ſaid county, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at* ——— *within the town and conſtablewick aforeſaid, in the county aforeſaid, did take and arreſt one* A. O. *late of* ——— *labourer, on ſuſpicion of having committed a certain felony, in felonioufly taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and thereupon he the ſaid* A. O. *under the cuſtody of him the ſaid* A. C. *the conſtable aforeſaid, was brought before* J. P. *eſquire, one of the juſtices of our ſaid lord the king aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors within the ſaid county committed, and he the ſaid* J. P. *by his warrant directed to the ſaid* A. C. *and others, did command the ſaid* A. C. *to carry and convey the ſaid* A. O. *to the gaol of our ſaid lord the king at* ——— *in the county aforeſaid, there to be ſafely kept, until he ſhould be lawfully delivered from thence; by virtue of which ſaid warrant, he the ſaid* A. O. *was taken and detained by him the ſaid* A. C. *and as he the ſaid* A. C. *was conveying and carrying him the ſaid* A. O. *to the gaol aforeſaid, afterwards, to wit, on the* ——— *day of* ——— *in the year aforeſaid, he the ſaid* A. O. *at* ——— *aforeſaid in the county aforeſaid, with force and arms, did felonioufly break away and eſcape from and out of the cuſtody of him the ſaid* A. C. *the conſtable aforeſaid,*

aforeſaid, againſt the will of him the ſaid A. C. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

Indictment for breaking out of gaol.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of* ——— *in the county aforeſaid, labourer, on the* ———*day of* ———*in the* ———*year of the reign of* ———*at* ——— *aforeſaid in the county aforeſaid, was arreſted, impriſoned, and detained, in the gaol of our ſaid lord the king, for a certain felony by him committed, that is to ſay, for the feloniouſly taking and carrying away one black gelding, the property of* ——— *of the value of* ——— *and that he the ſaid* A. O. *on the* ———*day of* ———*in the year aforeſaid, with force and arms, the aforeſaid gaol of our ſaid lord the king at* ——— *aforeſaid in the county aforeſaid feloniouſly did break, and thereby did eſcape from and out of the ſaid gaol, againſt the peace of our ſaid lord the king, his crown and dignity.*

Privileged place. See Reſcue.

Proceſs.

Proceſs by the commiſſion.

1. BY the commiſſion of the peace, the juſtices in ſeſſions have power to *make and continue proceſſes upon indictments, againſt the perſons indicted, until they can be taken, ſurrender themſelves, or be outlawed.*

Proceſs on indictments taken in the tourn.

2. And by the ſtatute of the 1 *Ed.* 4. *c.* 2. Indictments and preſentments taken in the ſheriff's tourn, ſhall be delivered to the next ſeſſions, who may award proceſs thereupon, in like form as if they had been taken before themſelves.

Proceſs by juſtices out of ſeſſions.

3. And the law alſo in ſeveral caſes in expreſs words directs proceſs to be made by juſtices out of ſeſſions; and in other caſes by neceſſary implication: as where a ſtatute doth give power to juſtices out of ſeſſions to inquire, hear, and determine, there they may make proceſs to cauſe the party to come and anſwer, otherwiſe they cannot proceed to hear and determine: and this may be either before or after preſentment or indictment as the ſeveral ſtatutes do require: Before preſentment or indictment it is called a *warrant*; after preſentment or indictment it is properly called *proceſs*. *Dalt. c.* 193.

Proceſs, what.

4. Commonly an indictment, being but an accuſation againſt a man, is of no force but only to put him to anſwer unto it. And hereof all proceſs hath the name, becauſe it *proceedeth* or goeth out upon former matter either original or judicial. *Lamb.* 519.

No need of proceſs, if the party is preſent.

5. And it ſeemeth plain, from the nature of the thing, that there can be no need of proceſs, where the defendant is preſent in court, but only where he is abſent. 2 *Haw.* 281.

To be in the king's name.

6. The proceſs ought to be in the name of the king. And if it iſſue from the king's bench, it ought to be under the teſte of the chief juſtice; and if it iſſue from any other court, there ſeems to be the ſame reaſon, that it ought to be under the teſte of the firſt in the commiſſion. 2 *Haw.* 283.

When returnable.

7. Upon an indictment in ſeſſions, there muſt be 15 days between the teſte and return of the *venire*, but if the entry be by conſent of parties, the *venire* may be returnable *immediate*, and the trial be the ſame day. 3 *Salk.* 371.

Proceſs for felony.

8. Proceſs on an indictment or appeal of death, is one *capias*, and then an exigent: But in the caſe of any other felony, then by the 25 *Ed.* 3. *c.* 14. two *capias's*, and then an exigent. *Hal. Pl.* 209. 2 *Haw.* 303. *Crown Circ.* 21.

Proceſs under felony.

9. The ordinary proceſſes upon all indictments of treſpaſs againſt the peace, or of other offences againſt penal ſtatutes, not being felony, or a greater offence, are as follows; Firſt, if the offender be abſent, a *venire facias*, which is but in nature of a ſummons to cauſe the party to appear, ſhall be awarded, except where other proceſs is directed by ſome ſtatute. 2 *Haw.* 283.

If it appear by the return to ſuch *venire*, that the party hath lands in the county, whereby he may be diſtrained, the *diſtreſs infinite* ſhall be awarded from time to time, till he do appear; and by force hereof he ſhall forfeit on every default ſo much as the ſheriff ſhall return upon him in iſſues. But if a *nihil* be returned on ſuch a *venire*, then three *capias's*, that is a *capias*, *alias*, and *pluries* ſhall iſſue. 2 *Haw.* 283.

Where the inhabitants of a pariſh are indicted or preſented, the proceſs is firſt a *venire*, then a *diſtringas*. *Crown Circ.* 21.

Proceſs on informations.

10. By the 21 *J.* *c.* 4. by which all popular actions on penal ſtatutes are reſtrained to their proper counties, the like proceſs in every popular action, bill, plaint, ſuit, or information, on a penal ſtatute, before the quarter ſeſſions (or higher

higher courts) ſhall be awarded as in an action of treſpaſs *vi & armis* at the common law.

And conſequently, the proceſs in all ſuch ſuits muſt be by attachment or *pone per vadios*, and after by *diſtreſs infinite*, whereby the return the party appears to be ſufficient, otherwiſe by *capias*. 2 *Haw.* 284.

11. If a defendant appear to an indictment of felony, and afterwards before iſſue joined make an eſcape, either from his bail, or from priſon; the common *capias*, *alias*, and *pluries* ſhall be awarded againſt him, unleſs there had been an *exigent* before, in which caſe a new exigent ſhall be awarded. 2 *Haw.* 285. Proceſs on an eſcape.

12. The *exigent* ſhall not be *awarded againſt acceſſaries*, until the principal ſhall be attainted. 3 *Ed.* 1. *c.* 14. 2 *Haw.* 306. Proceſs againſt acceſſaries.

13. By the 8 *H.* 6. *c.* 10. *On indictments for treaſon, felony, or treſpaſs, againſt perſons dwelling in other counties than where the indictment is taken, before any exigent awarded, preſently after the firſt writ of* capias *awarded and returned, another writ of* capias *ſhall be awarded, directed to the ſheriff of the county whereof the perſon indicted was ſuppoſed to be converſant by the ſame indictment, returnable before the ſame juſtices or others before whom he is indicted, at a certain day, containing the ſpace of* 3 *months from the date of the ſaid laſt writ, where the counties are holden from month to month; and where they are holden from* 6 *weeks to* 6 *weeks, he ſhall have* 4 *months, until the return of the ſame writ: by which writ of ſecond* capias *it ſhall be commanded to the ſame ſheriff to take the perſon indicted by his body, if he can be found within his bailiwick, and if he cannot be found within his bailiwick, that the ſaid ſheriff ſhall make proclamation in two counties before the return of the ſame writ, that he which is ſo indicted, ſhall appear before the ſaid juſtices or others, in the county, liberty, or franchiſe where he is indicted, at the day contained in the ſaid laſt writ of* capias, *to anſwer to the king of the felony, treaſon, or treſpaſs, whereof he is ſo indicted: After which ſecond writ of* capias *ſo ſerved and returned, if he which is ſo indicted come not at the day of the ſame writ of* capias *returned, the exigent ſhall be awarded. And every exigent and outlawry otherwiſe awarded or pronounced ſhall be void.* Proceſs into a foreign county.

And if any ſuch indictment ſhall be removed by certiorari, then before the exigent awarded, preſently after ſuch firſt capias *returned, another writ of* capias *ſhall be directed as before, returnable before the king in his bench.*

But this ſhall not extend to indictments taken in the county of Cheſter.

Alſo

Alſo if any perſon be indicted of felony or treaſon, and at the time of the ſame felony or treaſon ſuppoſed was converſant within the county whereof the indictment maketh mention, the like proceſs ſhall be made againſt the perſon ſo indicted, as hath formerly been uſed; that is, without ſending proceſs into the other county.

But every perſon indicted in the form aforeſaid, after he is duly acquit by verdict, ſhall have an action upon his caſe, againſt the procurer of ſuch indictment; *and if ſuch procurer be attainted thereof, the plaintiff ſhall recover treble damages.* Which ſeemeth to be upon account of the diſtance at which he is ſuppoſed to live, from the place where he is indicted, and conſequently his extraordinary trouble in that behalf.

Dwelling in other counties] If the defendant be named of *B.* and late of *C.* there is no need of any *capias* to the ſheriff of the county where *C.* lies, becauſe it appears that the defendant is at preſent converſant at *B.* But if a defendant be named of no certain place at preſent, but only late of *B.* and late of *C.* and late of *D.* being all of them in counties different from that wherein the proſecution is commenced, a *capias* ſhall go to the ſheriff of every one of thoſe counties. 2 *Haw.* 306.

Shall be void] Not utterly void, but only voidable by writ of error. 2 *Haw.* 306.

County of Cheſter] But it may be awarded into the counties palatine of *Lancaſter* and *Durham*; and it ſeems that it ſhall be directed to, and returned by the chancellor of *Lancaſter*, or biſhop of *Durham:* And it hath been ſaid, that if he will not return it, the exigent may be awarded as well as if he had returned it; becauſe the court (of the ſeſſions at leaſt) cannot compel him to return it, and the proſecution might be unreaſonably delayed, if the proceedings were to be ſtayed till he ſhould return it. 2 *Haw.* 305. *Hal. Pl.* 209, 210.

Mr. *Marrow* ſaith, that by the equity of this ſtatute, if a perſon, indicted in one county is impriſoned in another, the juſtices may award an *habeas corpus* to remove him before themſelves. *Lamb.* 526.

To be executed by the ſheriff.

14. Concerning the execution of the proceſs, it is laid down as a general rule, that where ever the king is a party to the ſuit (as he certainly is to all informations and indictments), the proceſs ought to be executed by the ſheriff himſelf, and not by the bailiff of any franchiſe, whether it have the clauſe *non omittas* or not, and whether the defendant

dant be within a franchiſe or in the county at large, for the king's prerogative ſhall be preferred to any franchiſe: But it is ſaid, that this is to be intended only where in the grant of the franchiſe no mention is made of cauſes to which the king is a party. 2 *Haw.* 284.

15. And if the party be in an houſe, if the doors be ſhut, and the ſheriff (having given notice of his proceſs) demand admittance, and the doors be not opened, he may break open the doors and enter to take the offender. 2 *H. H.* 202. Breaking open doors.

16. But no perſon, on the lord's day, ſhall ſerve or cauſe to be ſerved any writ, proceſs, warrant, order, or judgment (except in caſes of treaſon, felony, or breach of the peace); but the ſervice thereof ſhall be void, and the perſon ſerving the ſame ſhall be liable to anſwer damages to the party grieved, in the ſame manner as if he had done it without any writ, proceſs, warrant, order, or judgment at all. 29 *C.* 2. *c.* 7. *ſ.* 6. Proceſs on a ſunday.

17. It ſeems to be agreed, that every ſuit, whether civil or criminal, and alſo every proceſs in ſuch ſuit againſt jurors, ought to be properly continued from day to day, from its commencement to its concluſion, without any the leaſt gap or chaſm; and the ſuffering any ſuch gap or chaſm is properly called a *diſcontinuance*; and the continuing the ſuit by improper proceſs (as by a *capias* inſtead of a *diſtringas*), or by giving the parties an illegal day, is properly called a *miſcontinuance*; and if the juſtices, before whom the matter is depending, do not come on the day to which it is continued, it is ſaid to be *put without day*, and cannot be revived without a re-ſummons or re-attachment. 2 *Haw.* 298, 300. Proceſs diſcontinued.

Now proceſs may be diſcontinued ſeveral ways. As, 1. Where the ſecond is not teſted on the very ſame day, on which the firſt is returnable. 2. Where there is a ſeſſions intervening between the teſte and the return of a *capias*, that the defendant may not be impriſoned an unreaſonable time. But it is no objection to an *exigent*, that it is not returnable the next ſeſſions, becauſe it muſt allow time for five counties to be holden between its teſte and return. 3. Where after iſſue or demurrer, the court gives the party a day to a diſtant ſeſſions, without making any continuance to that immediately following. 4. Where the ſeſſions to which the ſuit is continued is adjourned, and the ſuit is not adjourned accordingly. 5. Where any of the parties are deſcribed in any continuance of the ſuit, whether on the roll, or by proceſs, by a name or addition variant from thoſe in the original, tho' only in one letter.

6. Where

6. Where a *venire* or *diſtringas* are iſſued, without any award on the roll to warrant them. 2 *Haw.* 298, 299.

And it ſeems generally to be taken as an undoubted principle, That a diſcontinuance by ſuffering a total chaſm in the proceedings, whether on the roll, or in the proceſs, by not giving a freſh continuance inſtantly upon the determination of the precedent, ſhall never be aided by any appearance or pleading over: But it is holden by the greater number of authorities, that if the original be good, and the defendant preſent in court, he ſhall be compelled to anſwer to ſuch original, let the proceſs whereon he came in, or the execution of it, be never ſo erroneous or defective, ſo that it never were diſcontinued; for the end of proceſs is to compel an appearance, and the end being ſerved, and a legal charge appearing againſt the defendant no way diſcontinued, the law will not ſo far regard a ſlip in the proceſs, as to let the defendant out of court, in order only to have him brought in again in better form. 2 *Haw.* 300.

Proceſs ſtayed by putting in bail.

18. The proceſſes (as well of *capias* as of outlawry) may be ſtayed by a *ſuperſedeas* iſſuing from other juſtices (out of ſeſſions) teſtifying that the party hath come before them, and hath found ſureties for his appearance to anſwer to the indictment, or to pay his fine. *Dalt. c.* 193.

And it ſeemeth that even any one juſtice may bail perſons indicted at the ſeſſions, for any offence under the degree of felony; for that the ſtatutes relating ſpecially to the power of juſtices in granting bail, do not in this caſe ſeem to take away the power, which one juſtice had before the making of the ſaid ſtatutes. 2 *Haw.* 103.

Proceſs of outlawry.

19. Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent* (which is a writ commanding the ſheriff to cauſe the defendant *(exigi)* to be *demanded* from county court to county court, until he be outlawed). And ſuch judgment is entred thus, *Therefore by the judgment of the coroner of our lord the king of the county aforeſaid, he is outlawed.* 2 Haw. 446.

Meaning of the word outlaw.

20. The word *outlaw (utlaghe) utlagatus*, is not from the Latin *lex*, but from the Saxon *laga*, which ſignifies *law*. And a perſon outlawed ſignifies one that is out of the protection of the king, and out of the aid of the law.

A woman outlawed.

21. And a man which is outlawed is called outlawed, but a woman which is outlawed is called waived, and not *utlagata*; for that women are not ſworn in leets or tornes, as men which are of the age of 12 or more are; and therefore men may be called *utlagati*, that is, *extra legem poſiti*, but

but women are *waviatæ*, that is, *derelictæ*, left out or not regarded, becauſe they were not ſworn to the law: wherein it is to be noted, that of ancient time a man was not ſaid to be within the law, that was not ſworn to the law, which is intended of the oath of allegiance in the leet. 1 *Inſt.* 122.

And hence it is, that a man under the age of 12 years, cannot be outlawed. 1 *Inſt.* 128.

22. Proceſs of outlawry lies in all indictments of treaſon or felony, and on all returns of a reſcous; and alſo on all indictments of treſpaſs with force and arms; and it ſeems probable, that it lies on an indictment of conſpiracy, or deceit, or any other crime of a higher nature than a treſpaſs with force and arms; but not on any indictment for a crime of an inferior nature. And it ſeems agreed, that it lies not on any action on a ſtatute, unleſs it be given by ſuch ſtatute, either expreſly, as in the caſe of a *præmunire*, or impliedly, as where a recovery is given by an action wherein ſuch proceſs lay before, as on a writ of treſpaſs for a forcible entry, on the 8 *H.* 6. *c.* 9. becauſe the ſtatute expreſly gives a recovery by ſuch writ, and ſuch proceſs lies in it by the common law. 2 *Haw.* 302, 303. For what outlawry may be.

23. In every *action perſonal* wherein any exigent ſhall be awarded out of any court, one writ of proclamation ſhall be awarded out of the ſame court, having day of teſte and return as the writ of exigent ſhall have, directed and delivered of record to the ſheriff where the defendant dwells; which writ of proclamation ſhall contain the effect of the action: And the ſheriff ſhall make one proclamation in the open county court, and another at the general quarter ſeſſions where the defendant dwells, and another a month at leaſt before the *quinto exactus*, by virtue of the ſaid writ of exigent, at or near the moſt uſual door of the church or chapel where the defendant ſhall be dwelling at the time of the exigent awarded, upon a *ſunday* immediately after divine ſervice. 31 *El.* *c.* 3. Outlawry proclaimed at the ſeſſions.

Alſo, upon iſſuing any exigent out of any of the king's courts, againſt any perſon for a *criminal* matter, before judgment or conviction, there ſhall alſo iſſue a writ of proclamation, bearing the ſame teſte and return, where the perſon in the record of the proceeding is mentioned to inhabit, according to the form of the 31 *El.* *c.* 3. which writ of proclamation ſhall be delivered to the ſheriff three months before the return of the ſame. 4 & 5 *W.* *c.* 22. *ſ.* 4.

24. If there are two coroners in a county, or more, one may execute the writ, as in caſe of an exigent, but the Return of the outlawry.

the return muſt be in the name of the coroners. 2 *H. H.* 56.

And the return of the outlawry muſt be certain: It muſt ſhew where the county court was held, and in what county; and muſt return the day, and year of the king to every *Exactus*. 2 *H. H.* 203.

And alſo the ſheriff's name and office muſt be ſubſcribed to the return of the exigent. 2 *H. H.* 204.

Capias utlagatum.

25. It is ſaid, that the juſtices in ſeſſions cannot iſſue a *capias utlagatum*, but muſt return the record of the outlawry into the king's bench, and there proceſs of *capias utlagatum* ſhall iſſue. 2 *H. H.* 52.

But in *T.* 10 *J.* The opinion of all the court of common pleas was, that if one be outlawed before the juſtices of the peace on an indictment of felony, they may award a *capias utlagatum*; and ſo was the opinion of *Periam* chief baron, and all the court of the exchequer: for they that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction. 12 *Co.* 103.

Conſequences of outlawry;

26. If a perſon be outlawed at the ſuit of one man, all men ſhall take advantage of this perſonal diſability. 1 *Inſt.* 128.

But ſuch diſability abateth not the writ, but only diſableth the plaintiff, until he obtain a charter of pardon. 1 *Inſt.* 128.

For treaſon, or felony.

27. Upon outlawry in treaſon or felony, the offender ſhall loſe and forfeit as much as if he had appeared, and judgment had been given againſt him, as long as the outlawry is in force. 2 *Haw.* 446.

For an inferior offence.

28. But the outlawry for a miſdemeanor, doth not inure as a conviction for the offence, as it doth in caſes of treaſon and felony; but as a conviction of the contempt for not anſwering, which contempt is therefore puniſhed, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. *K.* and *Tippin*, 1 *W.* 2 *Salk.* 494.

Goods forfeited from the time of iſſuing the exigent.

29. The very iſſuing of the exigent, in caſe of treaſon or felony, gives to the king the forfeiture of the goods of the party, from the time of the teſte of the writ of exigent: and the forfeiture by the exigent awarded ſtands, altho' the indictment be quaſhed, until there be a judgment of reverſal on a writ of error; becauſe the king's title being of record, muſt be avoided by a record. 2 *H. H.* 204, 205.

Lands forfeited from the time of the outlawry.

30. And as the award of the exigent gives the forfeiture of the goods, ſo the outlawry gives the forfeiture or loſs of the

the lands of the party outlawed, to wit, in caſe of outlawry of treaſon his lands are forfeited to the king, of whomſoever they are held; and in caſe of outlawry of felony, to the lord by eſcheat, of whom they are immediately holden. 2 *H. H.* 206.

But the outlawry muſt be firſt returned.

31. But it muſt be remembred, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any eſcheat; but it muſt be returned by the ſheriff, with the writ of *exigi facias*, and the return indorſed. 2 *H. H.* 206. Or elſe it muſt be removed by certiorari: for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. 1 *Inſt.* 288.

And after inquiſition found.

32. And by the outlawry all *perſonal* chattels are veſted in the king by forfeiture; but *real* chattels, or freehold eſtates are not veſted in the king, till after inquiſition found. 3 *Salk.* 262.

Whether it is lawful to kill an outlaw.

33. In ancient times no man could have been outlawed but for felony, the puniſhment whereof was death; and upon this account, an outlawed man was called *woolfeſhead*, becauſe he might be put to death by any man, as a wolf that hateful beaſt might. But in the beginning of the reign of K. *Ed.* 3. it was reſolved by the judges, for avoiding of inhumanity, and of effuſion of chriſtian blood, that it ſhould not be lawful for any man but the ſheriff, having lawful warrant, to put to death any man outlawed, tho' it were for felony; and if he did, he ſhould undergo ſuch pain of death, as if he had killed any other man: and ſo the law continueth to this day. 1 *Inſt.* 28.

Judges of aſſize may award execution of perſons outlawed before juſtices of the peace.

34. If a man be indicted before juſtices of the peace, and thereupon outlawed, and is taken and committed to priſon, the juſtices of gaol delivery may award execution of this priſoner; for they are conſtituted to deliver the gaol. 4 *Inſt.* 169. *Hale's Pl.* 158. 2 *H. H.* 35.

Clergy in caſes of outlawry.

35. Where clergy is allowable, it ſhall be as much allowed to one who is outlawed, as to one who is convicted by verdict or confeſſion. 2 *Haw.* 343.

But a ſtatute taking the benefit of clergy from thoſe who ſhall be found guilty, doth not thereby take it from thoſe who are outlawed. 2 *Haw.* 343.

But by the 3 & 4 W. c. 9. ſ. 2. *If any perſon be indicted of any offence, for which, by any former ſtatute, he is excluded from clergy, upon conviction; if he ſhall be outlawed thereupon, he ſhall not have his clergy.*

By any former ſtatute] Hereby it appears, that this extends not to offences made felonies by ſtatutes ſubſequent to this ſtatue. 2 *Haw.* 348.

36. Where

Perſon outlawed cannot be plaintiff.

36. Where a perſon is outlawed, the defendant may ſhew all the matter and outlawry returned of record, and demand judgment if he ſhall be anſwered, becauſe he is out of the law, to ſue an action during the time that he is outlawed. 1 *Inſt.* 128.

Cannot be a juror.

37. It ſeems to be a good challenge of a juror, that he is outlawed, either for a criminal matter, or as ſome ſay, in a perſonal action; but not a principal challenge, but only to the favour, unleſs the record of the outlawry be produced. 2 *Haw.* 215, 417.

May be a witneſs.

38. But it ſeems clear, that outlawry in a *perſonal* action is not a good exception againſt a witneſs, as it is againſt a juror. 2 *Haw.* 443.

May make a will.

39. An outlawed perſon may make a will, and have executors or adminiſtrators. *Cro. El.* 575.

And an executor may reverſe the outlawry of the teſtator, where he was not lawfully outlawed. 1 *Leon.* 325.

Reverſing outlawry.

40. Outlawry may be reverſed ſeveral ways; as by procuring a *ſuperſedeas* and delivering it to the ſheriff before the *quinto exactus*, or by ſhewing any matter apparent on record which makes the outlawry erroneous, as the want of an original, or the omiſſion of proceſs, or want of form in a writ of proclamation, or a return by a perſon appearing not to be ſheriff, or a variance between the original and exigent or other proceſs, or by a miſnomer, or want of addition. 2 *Haw. c.* 50.

In what caſe the party muſt appear perſonally to reverſe it.

41. And upon a writ of error upon an outlawry in felony, the party outlawed muſt render himſelf in cuſtody, and pray the allowance of the writ of error in perſon: and if the outlawry be reverſed, he ſhall be put to anſwer the indictment. 2 *H. H.* 209.

But by the 4 & 5 *W. c.* 18. one outlawed, except for treaſon or felony, need not appear in perſon to reverſe an outlawry, but by attorney. 2 *Salk.* 496.

Other kinds of proceſs.

42. There is another kind of proceſs out of a court of record, againſt offenders, called *attachment*, which is generally for contempt; which belongs to title **Attachment.**

The proceſs againſt *jurors*, may be ſeen in the title **Jury.**

And the proceſs againſt *witneſſes*, in title **Evidence.**

Forms of proceſs; and firſt of a *Venire.*

GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, To the ſheriff of the county of* Weſtmorland, *greeting. We command you, that you omit not, by rea-*

ſon

ſon of any liberty in your bailiwick, but that you cauſe A. O. *of* ——— *in your ſaid county, yeoman, to come before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at* ——— *in your ſaid county, on the* ——— *day of* ——— *next enſuing, to anſwer unto us upon certain articles preſented againſt him the ſaid* A. O. *And have you there then this precept. Witneſs* J. P. *and* K. P. *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

And upon this *Venire*, if the defendant be returned ſufficient, and maketh default, then a *Diſtringas* ſhall be awarded, and ſo the ſame proceſs infinite, until he come in: But if a *nihil habet* be returned at the firſt, then after the *Venire*, there ſhall go out a *Capias*, *Alias*, *Pluries*, and *Exigent*. *Dalt. Sher.* 160.

Form of a *Diſtringas*.

GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth. To the ſheriff of the county of* ——— *greeting. We command you, that you omit not, by reaſon of any liberty in your bailiwick, but that you enter the ſame, and* diſtrain A. O. *of* ——— *in your county, yeoman, by all his lands and tenements* &c. *and that you anſwer for the iſſues thereof* &c. *and that you have his body before our juſtices aſſigned* [and ſo on, as before in the *Venire*.]

But if a *nihil* (as hath been ſaid) be returned at the firſt upon the *Venire facias*; then a *Capias* ſhall iſſue, thus:

GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth: To the ſheriff of the county of* ——— *greeting. We command you, that you omit not, by reaſon of any liberty in your bailiwick, but that you enter the ſame, and* take A. O. *of* ——— *in your county, yeoman, if he ſhall be found in your bailiwick, and him cauſe to be ſafely kept; ſo that you have his body before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at* ——— *in your county, on the* ——— *day of* ——— *next enſuing, to anſwer unto us concerning divers treſpaſſes, contempts, and offences, of which he is indicted. And have you there then this writ. Witneſs* J. P. *and* K. P. *at* ——— *the* ——— *day of* ——— *in the* ——— *year of our reign.*

At which day A. S. *knight, ſheriff of the county aforeſaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.*

Note; The cauſe why the entry is made, *and he did not come*, is, becauſe the party may appear voluntarily, and ſo avoid the attachment or arreſting of his body.

The *Alias Capias.*

GEORGE——*To the ſheriff*——*We command you, as we before commanded you, that you omit not*—— (as before.)

At which day——(as before); *and he did not come. Therefore it is commanded to the ſheriff, as it hath been often commanded,* &c.

The *Pluries Capias.*

GEORGE &c. *To the ſheriff,* &c. *We command you, as we have often commanded you, that you omit not* (as before.)

At which day A. S. *knight, the ſheriff aforeſaid, returned, that the aforeſaid* A. O. *is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cauſe to be demanded* &c.

The *Exigent.*

GEORGE &c. *To the ſheriff* &c. *greeting. We command you, that you cauſe* A. O. *of*——*in your county, yeoman, to be* demanded, *until, by the law and cuſtom of our kingdom of* England, *he be outlawed, if he ſhall not appear; and if he ſhall appear, that then you take him, and cauſe him to be ſafely kept, ſo that you have his body before our juſtices aſſigned to keep our peace, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in your ſaid county committed, at the general quarter ſeſſions of the peace of your county next after the feaſt of*——*next enſuing to be held, whereſoever in the ſame county it ſhall happen to be holden, to anſwer unto us of divers treſpaſſes, contempts, and offences, of which he is indicted. And have you there then this writ. Witneſs Sir* J. P. *baronet at*——*in the ſaid county, the*——*day of*——*in the*——*year of our reign.*

At which day A. S. *knight, ſheriff of the county aforeſaid, returned, that at the county holden at*——*the*——*day of*

——in the —— year of the reign of our lord the king that now is, and ſo at four other counties then next following, there holden, the aforeſaid A. O. *was demanded, and did not appear. Therefore by the judgment of the coroner of our ſaid lord the king, in the county aforeſaid, he was outlawed.*

The *Capias Utlagatum.*

GEORGE *&c. To the ſheriff &c. greeting. We command you, that you omit not, by reaſon of any liberty in your county, but that you take* A. O. *late of ——— in your county, labourer, if he ſhall be found within your county, and him cauſe ſafely to be kept, ſo that you have his body before the keepers of our peace and our juſtices aſſigned to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in your county committed, at ——— the ——— day of ——— to ſtand right in our court before our juſtices aforeſaid, upon a certain outlawry againſt him the ſaid* A. O. *promulged, at our ſuit, for certain felonies* (or *treſpaſſes*) *whereof he was convicted the ——— day of ———. And have you then there this writ. Witneſs &c.*

Profaneneſs. See Blaſphemy.

Prophecies.

IF any perſon ſhall adviſedly and directly advance, publiſh, and ſet forth by writing, printing, ſinging, or any other open ſpeech or deed, any fond, fantaſtical, or falſe prophecy, upon or by the occaſion of any arms, fields, beaſts, badges, or ſuch other like things accuſtomed in arms, cognizances, or ſignets, or upon or by reaſon of any time, year, or day, name, bloodſhed, or war, to the intent thereby to make any rebellion, inſurrection, diſſenſion, loſs of life, or other diſturbance in the realm; and ſhall be convicted thereof before a judge of aſſize, or juſtice of the peace, within ſix months after the offence committed, he ſhall for the firſt offence be impriſoned for a year, and forfeit 10 *l.* and for the ſecond offence, ſhall be impriſoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who ſhall ſue for them in any court of record. 5 *El. c.* 15.

Mr. *Barlow* thinks that the carrying of white roſes on the tenth of *June*, comes within the purview of this ſtatute.

Proteſtant diſſenters. See Diſſenters.

Publick Worſhip.

Impugners of the rites of the church.

1. IMpugners of the book of common prayer, of the 39 articles, of the rites and ceremonies of the church of *England*, of the epiſcopal government of the church, or of the form of ordering and conſecrating archbiſhops and biſhops, ſhall be *ipſo facto* excommunicated, and not reſtored but upon repentance, and publick recantation. *Can.* 4, 5, 6, 7, 8.

Speaking irreverently of the ſacrament.

2. If any perſon ſhall ſpeak unreverently of the ſacrament of the lord's ſupper, he ſhall ſuffer impriſonment, and make fine and ranſom at the king's will. And three juſtices (1 Q.) may take information by the oaths of two witneſſes; and afterwards, at the ſeſſions, may inquire thereof by the oaths of 12 men upon indictment. And they ſhall, at the ſeſſions where the offender ſhall be indicted, direct a writ to the biſhop to appear by himſelf or deputy at the trial. But no perſon ſhall be moleſted, but within three months after the offence committed. 1 *Ed.* 6. *c.* 1.

Penalty of 12 d. a ſunday for not reſorting to church.

3. All perſons, having no lawful or reaſonable excuſe to be abſent, ſhall reſort to their pariſh church or chapel, or upon reaſonable let thereof, to ſome uſual place where divine ſervice ſhall be performed, according to the liturgy and practice of the church of *England*, upon every *ſunday* and holiday; on pain of puniſhment by the cenſures of the church, or of forfeiting 1 *s.* for every offence to the poor, to be levied by the churchwardens by diſtreſs. 1 *El.* *c.* 2. *ſ.* 14, 24. Except diſſenters qualified by the act of toleration. 1 *W.* *c.* 18.

And he who is abſent from his own pariſh church, ſhall be put to prove where he went to church. 1 *Haw.* 13.

And any juſtice of the peace, on proof unto him made (in one month after default in coming to church on *ſundays*) by confeſſion, or oath of witneſs, may call the party before him; and if he ſhall not make a ſufficient excuſe, and due proof thereof, to the juſtice's ſatisfaction, ſuch juſtice may give warrant to the churchwarden to levy 12 *d.* to the uſe of the

the poor, by diſtreſs. For want of diſtreſs, commitment till paid. 3 *J.* *c.* 4. *ſ.* 27, 28.

4. Every perſon above the age of 16 years, who ſhall not repair to ſome church, chapel, or uſual place of common prayer, being convicted thereof before the judges of aſſize, or juſtices in ſeſſions, ſhall forfeit 20 *l.* a month, one third to the king, one third to the maintenance of the poor of the pariſh, and of the houſes of correction, and of impotent and maimed ſoldiers, as the lord treaſurer, chancellor, and chief baron of the exchequer ſhall order, and one third to him who ſhall ſue in any court of record. If not paid in 3 months after judgment, he ſhall be impriſoned till he pay, or conform himſelf to go to church. 23 *El.* *c.* 1. *ſ.* 5, 8. 11. 29 *El.* *c.* 6. *ſ.* 7. Penalty of 20 l. a month, for not reſorting to church.

And this penalty of 20 *l.* a month diſpenſeth not with the forfeiture of 12 *d.* a *ſunday*; for both may well ſtand together; and the 12 *d.* is immediately forfeited upon the abſence of each particular day. 1 *Haw.* 13.

And every offender in not repairing to divine ſervice, having been once convicted (and not conforming) ſhall pay 20 *l.* a month into the exchequer, in the term of *Eaſter* or *Michaelmas* which ſhall be next after ſuch conviction; and alſo ſhall, without any other indictment or conviction, for every month after ſuch conviction, ſo long as he ſhall not conform, pay into the exchequer in every *Eaſter* and *Michaelmas* term, as much as ſhall then remain unpaid, after ſuch rate of 20 *l.* a month: And if default ſhall be made in any part of ſuch payment, the king may by proceſs out of the exchequer, ſeize all the goods, and two parts of the land, of ſuch offender. 29 *El.* *c.* 6. *ſ.* 3, 4, 5, 6. 3 *J.* *c.* 4. *ſ.* 8, 9.

Or the king may refuſe the 20 *l.* a month, tho' it be duly tendred, and ſeize two parts of the lands at his option. 3 *J.* *c.* 4. *ſ.* 11.

But copyhold lands are not within theſe ſtatutes, in reſpect of the prejudice which would accrue to the lord, by the loſs of his ſervices. 1 *Haw.* 14.

And every perſon who ſhall uſually on *ſundays* have in his houſe divine ſervice as eſtabliſhed by law, and be thereat himſelf uſually preſent, and ſhall four times a year go to the pariſh church or other common church or chapel, ſhall not incur any penalty for not repairing to church. 23 *El.* *c.* 1. *ſ.* 12.

And this alſo ſhall not extend to qualified proteſtant diſſenters. 1 *W.* *c.* 18.

5. Every perſon who ſhall retain in his ſervice, or ſhall relieve, keep, or harbour in his houſe any ſervant, ſojourner, Penalty for harbouring a recuſant.

journer, or ſtranger, who ſhall not repair to church, but ſhall forbear for a month together, not having reaſonable excuſe, ſhall forfeit 10 *l.* for every month he ſhall continue in his houſe ſuch perſon ſo forbearing. And the juſtices in ſeſſions may determine the ſame. 3 *J.* *c.* 4. *ſ.* 32, 33, 36.

Recuſant diſabled as to offices.

6. No recuſant convict ſhall practiſe law or phyſick, nor ſhall be judge or miniſter of any court, or bear any military office by land or ſea; and ſhall forfeit for every offence 100 *l.* And ſhall alſo be diſabled to be executor, adminiſtrator, or guardian. 3 *J.* *c.* 5. *ſ.* 8, 22.

Recuſant conforming.

7. A recuſant conforming himſelf ſhall be diſcharged of all penalties, which he might otherwiſe ſuſtain by reaſon of his recuſancy. 1 *J.* *c.* 4. *ſ.* 2.

Publick worſhip in the navy.

8. All commanders, captains, and officers at ſea, ſha cauſe the publick worſhip of almighty god, according to the liturgy of the church of *England*, to be performed in their reſpective ſhips: And prayers and preachings by the chaplains ſhall be performed diligently. 22 *G.* 2. *c.* 33. *art.* 1.

Qualification of lecturers.

9. No perſon ſhall be received as a lecturer, or allowed to preach or read any lecture or ſermon, without licence from the biſhop, and aſſenting to the 39 articles, and reading the common prayer before his firſt ſermon, and on the firſt lecture day of every month; on pain of three months impriſonment, for every offence, by two juſtices of the peace on certificate from the biſhop of the offence committed. 13 & 14 *C.* 2. *c.* 4. *ſ.* 19, 20, 21.

Diſturbers of publick worſhip.

10. By the 1 *Mar. ſeſſ.* 2. *c.* 3. If any perſon ſhall diſturb a *preacher in his ſermon* by word or deed, he ſhall be apprehended and carried before a juſtice of the peace, who ſhall commit him to ſafe cuſtody, and within ſix days, he and another juſtice ſhall examine the fact, and if they find him guilty by two witneſſes, or confeſſion, they ſhall commit him to gaol for three months, and further to the next ſeſſions; and if at the ſeſſions he repents, and is reconciled, he ſhall be diſcharged on finding ſureties for his good behaviour for a year; if not, he ſhall be continued in gaol till he does; ſaving the eccleſiaſtical juriſdiction; and he ſhall not be puniſhed both ways.

And this ſtatute, tho' made in queen *Mary*'s reign, extendeth to the divine ſervice now eſtabliſhed. *Cod.* 372.

And by the 1 *W.* *c.* 18. *ſ.* 18. If any perſon ſhall willingly and of purpoſe, come into any church, chapel, or *other congregation permitted by the act of toleration*, and diſquiet or diſturb the ſame, or miſuſe any preacher or teacher; he ſhall, on proof thereof before one juſtice, by two witneſſes,

ſes, find two ſureties to be bound by recognizance in 50 *l.* and in default thereof ſhall be committed till the next ſeſſions, and on conviction there of the ſaid offence, he ſhall forfeit to the king 20 *l.*

But it ſhall be lawful for all men, as well in churches, chapels, oratories, or other places, to uſe openly any pſalms or prayer taken out of the bible, at any due time, not letting or omitting thereby the ſervice. 2 & 3 *Ed.* 6. *c.* 1. *ſ.* 7.

And the court of king's bench refuſed to grant a certiorari, to remove an indictment at the ſeſſions, for a perſon not behaving himſelf modeſtly and reverently at the church, during divine ſervice; which altho' puniſhable by eccleſiaſtical cenſures, yet the court conceived it a proper cauſe within cognizance of the juſtices of the peace. 1 *Keb.* 491. And this was before the abovementioned ſtatute of the 1 *W.* *c.* 18.

11. No clergyman ſhall be arreſted in any church or churchyard, whilſt he attends to divine ſervice; on pain of the impriſonment of the offender, and ranſom at the king's will, and gree to the party arreſted. 50 *Ed.* 3. *c.* 5. 1 *R.* 2. *c.* 15. Arreſting a clergyman attending divine ſervice.

But the arreſt notwithſtanding, if not on a *ſunday*, is good in law. *Watſon*, *c.* 34.

Purveyors.

1. ANciently the king's court was ſupplied with neceſſaries from the ancient demeſnes of the crown; and in reſpect thereof, the tenants of thoſe lands had many privileges, which they ſtill enjoy: But this method being found to be troubleſome and inconvenient, was by degrees diſuſed; and afterwards the king was wont to appoint certain officers to buy-in proviſions for his houſhold, who were called purveyors, and claimed many privileges by the prerogative of the crown. 2 *Inſt.* 542. 1 *Haw.* 114. Abuſes of purveyors.

2. The ſeveral laws which reſtrained the exorbitancies of theſe purveyors, make up a pretty large title in the old books; but theſe laws proving ineffectual to remedy the evil complained of, at length by the ſtatute of the 12 *C.* 2. *c.* 24. purveyance was entirely taken away: By which it is enacted, that no ſum of money, or other thing, ſhall Purveyance taken away.

be taken for any proviſion, carriages, or purveyance for the king:

And that no perſon, under colour of purveyance, ſhall take any timber, fuel, cattle, corn, grain, malt, hay, ſtraw, victual, cart, carriage, or other thing, without conſent of the owner; nor ſhall require any to furniſh any horſes, oxen, or other cattle, carts, ploughs, wains, or other carriages, for the uſe of the king, or his houſhold, without the owner's conſent:

On pain of being committed to gaol, by a juſtice of the peace and the conſtable, until the next ſeſſions, to be there indicted; and alſo of paying to the party treble damages, and treble coſts, on an action at law.

Quakers.

SO far as quakers are concerned in the act of toleration, amongſt other proteſtant diſſenters, ſee title **Diſſenters.**

For quakers tithes, ſee title **Tithes.**

For quakers oaths, ſee title **Oaths.**

Quarentine. See **Plague.**

Rape.

I. What it is.
II. Evidence on an indictment of rape.
III. Puniſhment of rape.
IV. Principal and acceſſary.

I. What it is.

Rape, what.

1. RAPE is, when a man hath carnal knowledge of a woman, by force, and againſt her will. 2 *Inſt.* 180. 1 *Haw.* 108.

2. Alſo,

2. Alſo, if any perſon ſhall unlawfully and carnally know, and abuſe any woman child, under the age of ten years, whether with her conſent or againſt it, he ſhall be guilty of felony without benefit of clergy. 18 *El. c.* 7. Child under 10.

3. The offence of rape is no way mitigated, by ſhewing that the woman at laſt yielded to the violence, if ſuch her conſent was forced by fear of death, or of dureſs. 1 *Haw.* 108. Conſenting at laſt.

4. Alſo, it is not a ſufficient excuſe in the raviſher, to prove, that the woman is a common ſtrumpet; for ſhe is ſtill under the protection of the law, and may not be forced. 1 *Haw.* 108. Raviſhing a common ſtrumpet.

5. Nor is it any excuſe, that ſhe conſented after the fact. 1 *Haw.* 108. Conſenting after the fact.

And by the 6 *R.* 2. *c.* 6. When any woman is raviſhed, and afterwards doth conſent to the raviſher; they ſhall both of them be diſabled to have any inheritance, dower, or joint feoffment, but the next of blood ſhall enter. And the next of kin to the woman raviſhed may have an appeal againſt the raviſher, notwithſtanding ſuch conſent; and the defendant ſhall not be received to wage battel.

6. It is ſaid by Mr. *Dalton*, that if a woman at the time of the ſuppoſed rape do conceive with child by the raviſher, this is no rape; for (he ſays) a woman cannot conceive except ſhe doth conſent. And this he hath from *Stamford* and *Britton*, and *Finch*. *Dalt. c.* 160. Woman raviſhed conceiving.

But Mr. *Hawkins* obſerves, that this opinion ſeems very queſtionable; not only becauſe the previous violence is no way extenuated by ſuch a ſubſequent conſent; but alſo, becauſe if it were neceſſary to ſhew, that the woman did not conceive, the offender could not be tried till ſuch time as it might appear whether ſhe did or not; and likewiſe becauſe the philoſophy of this notion may be very well doubted of. 1 *Haw.* 108.

And L. *Hale* ſays, this opinion in *Dalton* ſeems to be no law. 1 *H. H.* 731.

II. Evidence on an indictment of rape.

1. The party raviſhed may give evidence on oath, and is in law a competent witneſs; but the credibility of her teſtimony, and how far forth ſhe is to be believed muſt be left to the jury, and is more or leſs credible according to the circumſtances of fact that concur in that teſtimony. 1 *H. H.* 633. The woman's oath.

2. For

Circumſtances in favour of it.

2. For inſtance, if the witneſs be of good fame; if ſhe preſently diſcovered the offence, and made purſuit after the offender; ſhewed circumſtances and ſigns of the injury, whereof many are of that nature, that only women are the moſt proper examiners and inſpectors; if the place, wherein the fact was done, was remote from people, inhabitants, or paſſengers; if the offender fled for it; theſe, and the like, are concurring evidences to give greater probability to her teſtimony, when proved by others as well as her ſelf. 1 *H. H.* 633.

Circumſtances in diſfavour of it.

3. But on the other ſide, if ſhe concealed the injury for any conſiderable time, after ſhe had opportunity to complain; if the place, where the fact was ſuppoſed to be committed, were near to inhabitants or common recourſe or paſſage of paſſengers, and ſhe made no outcry when the fact was ſuppoſed to be done, when and where it is probable ſhe might be heard by others; or if a man prove himſelf to be in another place, or in other company, at the time ſhe charges him with the fact; or if ſhe is wrong in the deſcription of the place, or ſwears the fact to be done in a place where it was impoſſible the man could have acceſs to her at that time, as if the room was locked up, and the key in the cuſtody of another perſon: theſe and the like circumſtances carry a ſtrong preſumption, that her teſtimony is falſe or feigned. 1 *H. H.* 633. *Read. Rape.*

Caution.

4. Upon the whole; rape, it is true, is a moſt deteſtable crime, and therefore ought ſeverely and impartially to be puniſhed with death: but it muſt be remembered, that it is an accuſation eaſily to be made, and hard to be proved, and harder to be defended by the party accuſed, tho' never ſo innocent: Therefore a wiſe jury will be cautious upon trials of offences of this nature, that they be not ſo much tranſported with indignation at the heinouſneſs of the offence, as to be over haſtily carried to the conviction of the perſon accuſed thereof, by the confident teſtimony, ſometimes of malicious and falſe witneſſes. 1 *H. H.* 635, 636.

III. Puniſhment of rape.

Felony without benefit of clergy.

1. Of old time rape was felony, for which the offender was to ſuffer death: afterwards the offence was made leſſer, and the puniſhment changed from death to the loſs of thoſe members whereby he offended; that is to ſay, it was changed to caſtration and loſs of his eyes, unleſs ſhe that was raviſhed, before judgment, demanded him for her huſband. 2 *Inſt.* 180.

Then,

Then, by the ſtatute of the 3 *Ed.* 1. *c.* 13. it was made a treſpaſs, ſubjecting the offender to two years impriſonment, and a fine at the king's will; and it was again made felony by the 13 *Ed.* 1. *c.* 34. and at laſt by the 18 *El.* *c.* 7. was excluded from the benefit of clergy.

Pardon.

2. And no charter of pardon ſhall be allowed for rape, unleſs the rape be ſpecified therein. 13 *R.* 2. *ſt.* 2. *c.* 1.

And all rapes are excepted out of the general pardon, of the 20 *G.* 2. *c.* 52.

IV. Principal and acceſſary.

Perſons preſent and aiding, are principals.

1. Mr. *Hawkins* ſays, all who are preſent, and actually aſſiſt a man to commit a rape, may be indicted as principal offenders, whether they be men or women. 1 *Haw.* 108.

And ſo, one woman may be a principal to the raviſhment of another.

Not preſent, acceſſaries.

2. And L. *Hale* ſays, that by the 18 *El.* *c.* 7. the principals in rape are ouſted of clergy, whether they be principals in the firſt degree, to wit, he that committed the fact; or principals in the ſecond degree, to wit, preſent, aiding, and abetting: but acceſſaries, before and after, have their clergy. 1 *H. H.* 633.

Indictment for a rape.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ———*in the county of*———*yeoman, not having god before his eyes, but being moved and ſeduced by the inſtigation of the devil, on the*———*day of*———*in the*———*year of the reign of*———*with force and arms, at*———*in the county aforeſaid, in and upon one* A. I. *ſpinſter, in the peace of god and of our ſaid lord the king then and there being, violently and felonioufly did make an aſſault, and her the ſaid* A. I. *againſt the will of her the ſaid* A. I. *then and there felonioufly did raviſh and carnally know; againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in ſuch caſe made and provided.*

Recognizance.

What it is.

1. A Recognizance is a bond of record, teſtifying the recognizor to owe a certain ſum of money to ſome other; and the acknowledging of the ſame is to remain of record; and none can take it but only a judge or officer of record. *Dalt. c.* 168.

In what caſes it may be taken.

2. And theſe recognizances, in ſome caſes the juſtices of the peace are enabled to take by the expreſs words of certain ſtatutes: But in other caſes (as for the peace, and good behaviour, and the like) it is rather in congruity, and by reaſonable intendment of law, than by any expreſs authority given them, either by their commiſſion, or by the ſtatute law. *Crom.* 125. *Dalt. c.* 168.

But whereſoever any ſtatute giveth them power to take a bond of any man, or to bind over any man to appear at the aſſizes or ſeſſions, or to take ſureties for any matter or cauſe, they may take a recognizance. Yea, whereſoever they have authority given them to cauſe a man to do a thing, there it ſeemeth they have in congruity power given them to bind the party by recognizance to do it: and if the party ſhall refuſe to be bound, the juſtice may ſend him to gaol. *Dalt. c.* 168.

But he can take no recognizance but only of ſuch matters as concern his office: and if he doth, it ſeemeth to be void. *Dalt. c.* 168.

The form of it.

3. Every obligation and recognizance, taken by juſtices of the peace, muſt be made to *our lord the king*; on pain of impriſonment of any perſon that ſhall take it otherwiſe. *Dalt. c.* 168.

It muſt alſo contain the name, place of abode, and trade or calling, both of principal and ſureties, and the ſums in which they are bound. *Barl. Recog.*

And it is moſt commonly ſubject to a *condition*, which is either indorſed, or under written, or contained within the body of it; upon the performance of which the recognizance ſhall be void. *id.*

Manner of taking it.

4. When the parties are to enter into recognizance, call them by their names thus: "You *A. B.* acknowledge to "owe to our ſovereign lord the king, the ſum of——— "And you *C. D.* acknowledge to owe to our ſovereign "lord the king, the ſum of———To be levied of your "reſpective goods and chattels, lands and tenements, for "the uſe of our ſaid lord the king, his heirs and ſuc- "ceſſors, if default ſhall be made in the condition fol- "lowing;

" lowing; That is to ſay, if you the ſaid *A. B.* ſhall make " default in appearing, *&c.*" But the parties need not to ſign it. *id.*

And it is uſual for the juſtices to mark at the foot of the examination, *A. B.* in 40*l.* to appear *&c.* And from ſuch ſhort note to make out a record afterwards. *id.*

Yet the recognizance is a matter of record preſently, ſo ſoon as it is taken and acknowledged, altho' it be not made up. *Dalt. c.* 168.

Lord *Coke* (1 *Inſt.* 260.) ſays, that a record is a memorial or remembrance in rolls of *parchment* &c. From whence it ſeemeth that a recognizance ought to be ingroſſed on parchment, perhaps for this reaſon, becauſe parchment is more durable than paper; but ſince there is no law which prohibits it to be ingroſſed on paper, it ſeemeth that if it ſhall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the juſtice ſhall only ſubſcribe his name, without his ſeal to it, this is well enough; and that may be in either of theſe ſorts, *Acknowledged before me* J. P. or only to ſubſcribe his name thus, *J. P.* Dalt. c. 176.

5. The juſtices ſhall certify their recognizances for keeping the peace, to the next ſeſſions, that the party may be called; and if he make default, the default ſhall be recorded, and the recognizance, with the record of the default, ſhall be ſent and certified into the chancery, king's bench, or exchequer. 3 *H.* 7. *c.* 1. How to be certified.

But in caſes of felony, the recognizances are to be certified to the general gaol delivery. 1 *&* 2 *P. & M. c.* 13.

The *conditions* of recognizances, in all the variety of caſes, are interſperſed under their proper titles.

Recognizance with ſureties.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the county aforeſaid, yeoman, and* A. S. *of* ——— *in the county aforeſaid, taylor, and* B. S. *of* ——— *in the county aforeſaid, labourer, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king; that is to ſay,*

ſay, the ſaid A. O. *the ſum of* 20l. *and the ſaid* A. S. *and* B. S. *each the ſum of* 10l. *ſeparately, of good and lawful money of* Great Britain, *to be made and levied of their goods and chattels, lands and tenements reſpectively, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if the ſaid* A. O. *ſhall make default in the condition hereon indorſed* [or, *here under written*].

Acknowledged before me

J. P.

Recognizance without ſureties.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the ſaid county, yeoman, perſonally came before me* J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and acknowledged himſelf to owe to our ſaid lord the king,* 10l. *of good and lawful money of* Great Britain, *to be made and levied of his goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in the condition underwritten* [or, *indorſed*].

J. P.

The Condition of the abovewritten [or, *within written*] *recognizance is ſuch, that if the abovebound* A. O. *ſhall* ——— *Then the ſaid recognizance to be void, or elſe remain in its force.*

Recuſants. See Popery, and Publick worſhip.

Regrator. See Foreſtaller.

Releaſe. See Surety.

Rent. See Diſtreſs.

Reſcue.

What is a reſcous.

1. RESCOUS is an ancient *French* word, coming from *reſcourrer*, that is, *recuperare*, to recover; and ſignifies a forcible ſetting at liberty againſt law, a perſon

ſon arreſted by the proceſs or courſe of law. 1 *Inſt.* 160.

It ſeems that it is neceſſary, that the reſcuer ſhould have knowledge that the perſon is under arreſt for a criminal offence, if he be in the cuſtody of a private perſon; but if he be in the cuſtody of an officer, there at his peril he is to take notice of it. 2 *H. H.* 606.

But it is ſaid, that to reſcue a felon taken on a general warrant, to anſwer what ſhall be objected againſt him, no cauſe being expreſſed in the warrant, is not felony. 1 *H. H.* 578.

Nor unleſs a felony hath been really done. *Hale's Pl.* 116.

When it ſhall be tried.

2. Altho' a *priſon breaker* may be arraigned for that offence, before he be arraigned of the crime for which he was impriſoned; yet he, who *reſcues* one impriſoned for felony, cannot, according to the better opinion, be arraigned for ſuch offence as for a felony, till the principal offender be attainted; but he may be immediately proceeded againſt for a miſpriſion, if the king pleaſes. 2 *Haw.* 140.

And therefore if the principal die before the attainder, he ſhall be fined and impriſoned. *Hale's Pl.* 116.

Alſo if the principal be found not guilty, or guilty of a crime not capital, the reſcuer ought to be diſcharged of felony, but he may be fined for the miſdemeanor. 1 *H. H.* 598, 599.

Indictment.

3. An indictment of *reſcous*, muſt ſet forth the nature and cauſe of the impriſonment, and the ſpecial circumſtances of the fact in queſtion. 2 *Haw.* 140.

Puniſhment.

4. A hindrance of a perſon to be arreſted, that has committed felony, is a miſdemeanor, but no felony: But if the party be arreſted, and then reſcued, if the arreſt was for felony, the reſcuer is a felon; if for treaſon a traytor; if for treſpaſs, fineable. *Hale's Pl.* 116. 2 *Haw.* 140.

There are alſo ſpecial penalties enacted for reſcuing offenders againſt particular ſtatutes, which belong not to this general title.

Clergy.

5. Altho' the felony for which a man is arreſted, be not within clergy; yet the reſcuing him is within clergy. 1 *H. H.* 599, 607.

Outlawry.

6. Upon the return of a *reſcous*, proceſs of outlawry ſhall iſſue. 2 *Haw.* 302.

Indictment for a reſcue.

THE *jurors for our lord the king upon their oath preſent, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— J. P. *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, did make, direct, and deliver a warrant or precept in writing, to* A. C. *of* ——— *in the ſaid county, yeoman, conſtable of the town of* ——— *aforeſaid in the county aforeſaid; by which ſaid warrant he the ſaid* A. C. *the conſtable aforeſaid, was commanded to take the body of* A. O. *late of* ——— *yeoman, and bring and have him the ſaid* A. O. *before the ſaid* J. P. *to be examined by him the ſaid* J. P. *concerning an aſſault ſaid to have been committed by him the ſaid* A. O. *upon* A. I. *of* ——— *yeoman: Which ſaid* A. C. *the conſtable aforeſaid, afterwards, that is to ſay, on the* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, by virtue of the ſaid warrant, did take and arreſt him the ſaid* A. O. *for the cauſe aforeſaid, and him the ſaid* A. O. *in his cuſtody by virtue of the ſaid warrant then and there had: And that the ſaid* A. O. *late of* ——— *aforeſaid, in the county aforeſaid, yeoman, and* B. O. *late of the ſame, yeoman, well knowing the ſaid* A. O. *ſo to be arreſted as aforeſaid, afterwards, to wit, on the ſaid* ——— *day of* ——— *in the year aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, with force and arms, in and upon the ſaid* A. C. *the conſtable aforeſaid, then and there being in the peace of god and of our ſaid lord the king, and in the execution of his ſaid office then and there being, did make an aſſault, and him the ſaid* A. C. *then and there did beat, wound, and ill treat; and that the ſaid* B. O. *him the ſaid* A. O. *out of the cuſtody of the ſaid* A. C. *and againſt the will of the ſaid* A. C. *then and there with force and arms unlawfully did reſcue and put him at large to go where he would; and that the ſaid* A. O. *himſelf out of the cuſtody of the ſaid* A. C. *and againſt the will of the ſaid* A. C. *then and there with force and arms, unlawfully did reſcue, and eſcape at large, where he would go; in contempt of our ſaid lord the king and his laws, to the great damage of the ſaid* A. C. *to the evil example of all others in the like caſe offending, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Reſtitution of ſtolen goods.

THERE are three means of reſtitution of goods, for the party from whom they were ſtolen; 1. By appeal of robbery or larceny. 2. By the ſtatute of the 21 *H.* 8. *c.* 11. And, 3. By courſe of the common law. 1 *H. H.* 538.

1. *Upon an appeal of robbery or larceny.* If the party were convict thereupon, reſtitution of the goods contained in the appeal, was to be made to the appellant; for it is one of the ends of that ſuit. 1 *H. H.* 538. Reſtitution upon an appeal.

And hence it is, that if in an appeal of felony or robbery, the appellant omit any of the goods ſtolen from him, they are forfeit and confiſcate to the king. 1 *H. H.* 538.

And this appeal muſt be upon freſh ſuit; and tho' antiently the law was ſtrict herein, as to the time and manner of the purſuit and apprehending of the felon, yet the law is now more liberal. 1 *H. H.* 540.

For if the felon be taken by any others, as by the ſheriff, yet if the party robbed come within a year after, and give notice of the felony, and enter his appeal, this is a freſh ſuit, if he uſed his diligence ſhortly after the felony to have taken him. 1 *H. H.* 540.

If a felon waive the goods ſtolen, without any purſuit after him, thoſe goods are not in law waived, nor forfeit to the king or lord of a franchiſe; but if he waive them upon a purſuit of him, then they are waived in law, and forfeit to the king or lord of the liberty. 1 *H. H.* 541.

And this forfeiture is not like a ſtray, where tho' the lord may ſeize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot ſeize his own goods, tho' upon freſh ſuit within the year and day. 1 *H. H.* 541.

But yet this is not an abſolute loſs of the owner's goods, but rather an expedient, ſettled by law, to drive the owner to convict the felon by proſecuting his appeal; and therefore if he make freſh ſuit, and proſecute his appeal, and the felon be thereupon convict or attaint, and the freſh ſuit be inquired and found, by verdict or inqueſt of office, he ſhall have reſtitution of the goods ſo waived. 1 *H. H.* 541.

2. *By the ſtatute of* 21 *H.* 8. *c.* 11. Which ſtatute introduced a new law for reſtitution; for before this ſtatute there was no reſtitution upon an indictment, but only upon an appeal: Which ſaid ſtatute enacteth as follows; Reſtitution by the ſtatute of 21 H. 8.

If any felon do rob or take away any man's money or goods, and thereof be indicted, and arraigned, and found guilty, or otherwiſe attainted, by reaſon of evidence given by the party robbed, or owner of the money or goods, or by any other by their procurement; then the party robbed, or owner of the goods, ſhall be reſtored to ſuch his money or goods: and as well the juſtices of gaol delivery, as other juſtices before whom the felon ſhall be found guilty, or otherwiſe attainted, may award a writ of reſtitution, in like manner as if the felon were attainted on appeal.

Found guilty or otherwiſe attainted] By this it ſeems queſtionable, whether the party be intitled to reſtitution, upon the defendant's ſtanding mute; in which caſe he is neither found guilty, nor otherwiſe attainted. 2 *Haw.* 332.

Or otherwiſe attainted] If the owner prefers a bill of indictment, which is found, and the felon flies, and is outlawed, the owner ſhall have reſtitution; for he gave evidence upon the indictment, which tho' it be not a conviction, is the ground of the outlawry, which is an attainder. 1 *H. H.* 545.

The party robbed, or owner] Therefore if the ſervant be robbed of the maſter's money, or his ſervant by his procurement, give evidence, and convict the felon, the maſter ſhall have a writ of reſtitution, if it appear upon the indictment and evidence, that it was the maſter's money; for the ſtatute gives reſtitution to the party robbed, or owner. 1 *H. H.* 542.

Or owner] If the teſtator is robbed, and the thief is convict upon the procurement of the executor; ſuch executor ſhall have reſtitution: for this being a beneficial law, ought to be conſtrued beneficially, ſo as to extend to executors and adminiſtrators. 3 *Inſt.* 242.

Shall be reſtored] If goods be ſtolen, and not waived in flight, nor ſeized by the king's officers, or lord of the manor, nor ſold in open market, the owner may take them again, without any writ of reſtitution, or may bring his action for them; and this, altho' he doth not proſecute the offender. 2 *Haw.* 168. *Kely.* 48.

And by the 31 *El. c.* 12. Where *horſes* are ſtolen, and ſold in open market, and the owner claims them again within ſix months, and pays the buyer as much as they coſt him, he ſhall have them again, without proſecution.

But otherwiſe, if the goods be waived by the felon in his flight, or in caſe they be not waived, yet if they be ſeized

by the king's officers, or lord of the manor, as ſuſpecting them to be ſtolen; there the party ſhall not have reſtitution, unleſs the felon be convicted at his proſecution. 2 *Haw.* 168. *Kely.* 49.

And in ſuch caſe, he ſhall have no more than what is mentioned in the indictment, tho' other goods were ſtolen at the ſame time; and the reaſon is, becauſe by ſuch omiſſion, the offender might have eſcaped. *Kely.* 49. 1 *H. H.* 545.

To ſuch his money, or goods] A man ſtole cattle, and ſold them in open market; the ſheriff ſeized the thief and the money, and he was convicted and hanged at the proſecution of the owner of the cattle, and he had reſtitution of the money; for tho' the ſtatute gives power to the juſtices to award reſtitution of the *money or goods ſtolen*, and tho' the money in this caſe was not ſtolen, yet becauſe it did ariſe by ſtealing, it ſhall be within the equity, tho' not in the very words of the ſtatute. *Noy* 128.

But it hath been a great queſtion, if goods be ſtolen, and by the thief ſold in a market overt, whether the thief being convicted upon the evidence of the party robbed, he ſhall have reſtitution upon this ſtatute of the thing ſold or not, the buyer not being privy to the felony: But lord *Hale* argues ſtrongly, that he ſhall have reſtitution, notwithſtanding the ſale in market overt of the goods ſtolen. 1. Becauſe this act was made to incourage perſons robbed, to purſue malefactors, and therefore they have an aſſurance of reſtitution; and it would be ſmall encouragement, if a thief by ſale in a market overt, which is every day almoſt in every ſhop in *London*, ſhould elude it. 2. Becauſe the man that is robbed, is robbed againſt his will, and cannot help it; but the buyer of ſtolen goods may chuſe whether he will buy, or if he buy, may yet refuſe to buy, unleſs well ſecured of the property of the goods, or knowing the owner. 1 *H. H.* 542, 3, 4. 2 *Haw.* 170. *Kely.* 48.

In like manner as if the felon were attainted on appeal] And yet, upon this ſtatute, if the offender be convict upon the evidence of the party robbed, or owner, he ſhall have reſtitution, tho' there were no freſh ſuit, or any inquiry by inqueſt touching the ſame; and this is conſtant practice, tho' in caſe of an appeal it be otherwiſe. 1 *H. H.* 545.

Yet if it ſhall appear to the court, that the party hath been guilty of groſs neglect in proſecuting; it ſeemeth that

in ſuch caſe he ſhall not be intitled to reſtitution. 2 *Haw.* 171.

Reſtitution by the common law,

3. *By courſe of the common law.* If the owner takes his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and puniſhable by fine and impriſonment; but if he take them again without any ſuch intent, it is no offence. 1 *H. H.* 546.

But after the felon is convicted, it can be no colour of crime to take his goods again, where he finds them; becauſe he hath purſued the law upon him, and may have his writ of reſtitution, if he pleaſe. 1 *H. H.* 546.

Riot, rout, and unlawful aſſembly.

I. What is a riot, rout, or unlawful aſſembly.
II. How the ſame may be reſtrained by a private perſon.
III. How by a conſtable, or other peace officer.
IV. How by one juſtice.
V. How by two juſtices.
VI. How by proceſs out of chancery.

I. What is a riot, rout, or unlawful aſſembly.

WHEN *three perſons or more ſhall aſſemble themſelves together, with an intent mutually to aſſiſt one another, againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, with force or violence, againſt the peace, or to the manifeſt terror of the people, whether the act intended were of itſelf lawful or unlawful*; If they only meet to ſuch a purpoſe or intent, although they ſhall after depart of their own accord, without doing any thing, this is an *unlawful aſſembly:*

If after their firſt meeting, they ſhall move forward towards the execution of any ſuch act, whether they put their intended purpoſe in execution or not; this, according to the general opinion, is a *rout:*

And if they execute ſuch a thing in deed, then it is a *riot.* (A) 1 *Haw.* 155. *Dalt. c.* 136.

Three perſons or more] And therefore if the jury do acquit all but two, and find them guilty, the verdict is void, unleſs

unleſs they be indicted *together with other rioters unknown*, becauſe it finds them guilty of an offence, whereof it is impoſſible that they ſhould be guilty; for there can be no riot, where there are not more perſons than two. 2 *Haw.* 441.

And infants under the age of diſcretion are not perſons within this deſcription, puniſhable as rioters. 1 *Haw.* 159.

Note; In 1 *Haw.* 156, 157, 158, the words *more than three perſons* are three times over inſerted inſtead of *three perſons or more*; which is only remarked as an inſtance, that in a variety of matter, it is impoſſible for the mind of man to be always equally attentive.

Aſſemble themſelves together] It ſeems agreed, that if a number of perſons being met together at a fair, or market, or church ale, or on any other lawful and innocent occaſion, happen on a ſudden quarrel to fall together by the ears, they are not guilty of a riot, but of a ſudden affray only, of which none are guilty but thoſe who actually engage in it; becauſe the deſign of their meeting was innocent and lawful, and the ſubſequent breach of the peace happened unexpectedly, without any previous intention concerning it: Yet it is ſaid, that if perſons innocently aſſembled together, do afterwards upon a diſpute happening to ariſe among them, form themſelves into parties, with promiſes of mutual aſſiſtance, and then make an affray, they are guilty of a riot; becauſe upon their confederating together with an intention to break the peace, they may as properly be ſaid to be aſſembled together for that purpoſe from the time of ſuch confederacy, as if their firſt coming together had been on ſuch a deſign. 1 *Haw.* 156.

In the execution of ſome enterprize of a private nature] It ſeems agreed, that the injury or grievance complained of, and intended to be revenged or remedied by ſuch an aſſembly, muſt relate to ſome private quarrel only; as the incloſing of lands, in which the inhabitants of a town claim a right of common, or gaining the poſſeſſion of tenements the title whereof is in diſpute, or ſuch like matters relating to the intereſt or diſputes of particular perſons, and no way concerning the publick; for wherever the intention of ſuch an aſſembly is to redreſs publick grievances, as to pull down all incloſures in general, or reform religion, and the like, it is high treaſon. 1 *Haw.* 157.

Againſt the peace, or to the terror of the people] It ſeems to be clearly agreed, that in every riot there muſt be ſome

ſuch circumſtances, either of actual force or violence, or at leaſt of an apparent tendency thereto, as are naturally apt to ſtrike a terror into the people; as the ſhew of armour, threatning ſpeeches, or turbulent geſtures; for every ſuch offence muſt be laid to be done *to the terror of the people:* And from hence it clearly follows, that aſſemblies at wakes, or other feſtival times, or meetings for exerciſe of common ſports or diverſions, as bull baiting, wreſtling, and ſuch like, are not riotous. 1 *Haw.* 157.

And from the ſame ground alſo it ſeems to follow, that it is poſſible for three perſons or more to aſſemble together with an intention to execute a wrongful act, and alſo actually to perform their intended enterprize, without being rioters; as if a man aſſemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for ſuch purpoſe, altho' another man hath better right to the thing ſo carried away, and that this act be wrong and unlawful; yet it is of it ſelf no riot, except there be withal threatning words uſed, or other diſturbance of the peace. *Dalt. c.* 137. 1 *Haw.* 157.

Much more may any perſon, in a peaceable manner, aſſemble a meet company, to do any lawful thing, or to remove or caſt down any common nuſance: Thus every private man, to whoſe houſe or land any nuſance ſhall be erected, made, or done, may in peaceable manner aſſemble a meet company, with neceſſary tools, and may remove, pull, or caſt down ſuch nuſance, and that, before any prejudice received thereby; and for that purpoſe, if need be, may alſo enter into the other man's ground. Thus a man erected a wear croſs a common river, where people have a common paſſage with their boats, and divers did aſſemble, with ſpades, crows of iron, and other things neceſſary to remove the ſaid wear, and make a trench in his land that did erect the wear, to turn the water, ſo as they might the better take up the ſaid wear, and they did remove the ſame nuſance; this was holden neither any forcible entry, nor yet any riot. *Dalt. c.* 137.

But in the caſes aforeſaid, if in removing any ſuch nuſance, the perſons ſo aſſembled ſhall uſe any threatning words (as to ſay, they will do it tho' they die for it, or ſuch like words) or ſhall uſe any other behaviour, in apparent diſturbance of the peace, then it ſeemeth to be a riot; and therefore where there is cauſe to remove any ſuch nuſance, or to do any like act, it is the ſafeſt not to aſſemble any multitude of people, but only to ſend one or two perſons,

or

or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or caſt down the ſame, and that ſuch perſons tend their buſineſs only, without diſturbance of the peace, or threatning ſpeeches. *Dalt. c.* 137.

Whether the act intended were of it ſelf lawful or unlawful] It hath been generally holden, that it is no way material, whether the act intended to be done by ſuch an aſſembly, be of it ſelf lawful or unlawful; from whence it follows, that if three or more perſons aſſiſt a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like in number in a violent and tumultuous manner join together in removing a nuſance, or other thing which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be done by them were never ſo unlawful. 1 *Haw.* 158.

II. How the ſame may be reſtrained by a private perſon.

By the common law, any private perſon may lawfully endeavour to ſuppreſs a riot, by ſtaying thoſe whom he ſhall ſee engaged therein, from executing their purpoſe, and alſo by ſtopping others whom he ſhall ſee coming to join them. 1 *Haw.* 159.

III. How by a conſtable or other peace officer.

By the common law, the ſheriff, conſtable, and other peace officers, may and ought to do all that in them lies, towards the ſuppreſſing of a riot, and may command all other perſons to aſſiſt therein. 1 *Haw.* 159.

IV. How by one juſtice.

By the 34 *Ed.* 3. *c.* 1. *The juſtices of the peace ſhall have power to reſtrain rioters, and to arreſt and chaſtiſe them according to their offence; and cauſe them to be impriſoned and duly puniſhed, according to the law and cuſtom of the realm, and according to that which to them ſhall ſeem beſt to do, by their diſcretions and good adviſement.*

And this ſtatute hath been liberally conſtrued for the advancement of juſtice; for it hath been reſolved, that if a juſtice find perſons riotouſly aſſembled, he alone, without ſtaying for his companions, hath not only power to arreſt the offenders, and bind them to their good behaviour, or

impriſon them if they do not offer good bail; but that he may alſo authorize others to arreſt them, by a bare verbal command, without other warrant; and that by force thereof, the perſons ſo commanded may purſue and arreſt the offenders, in his abſence, as well as preſence. Alſo it is ſaid, that after a riot is over, any one juſtice may ſend his warrant, to arreſt any perſon who was concerned in it, and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour. 1 *Haw.* 160.

But it ſeems to be agreed, that no one juſtice hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over: Alſo if one juſtice, proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing himſelf, becauſe no ſingle juſtice is by this ſtatute made a judge of the ſaid offence. But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the ſtatute of *Northampton*, 2 *Ed.* 3. *c.* 3. and any one juſtice acting *ex officio*, in purſuance of the ſaid ſtatute, ſeize the armour, and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity. And for the ſame reaſon, if a juſtice proceeding on the ſtatute of the 15 *R.* 2. againſt forcible entries and detainers, ſhall upon his own view record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed. Alſo if a juſtice acting as a judge by any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch an uncontroulable credit to all matters of record, made by any judge of record as ſuch, that it will never admit of an averment againſt the truth thereof. 1 *Haw.* 160.

But if the rioters are above the number of 12, the offence is greatly inhanſed, and the power of one juſtice very much inlarged, by the act commonly called the riot act, 1 *G. ſt.* 2. *c.* 5. which is required to be read at every quarter ſeſſions and leet: By which it is enacted, That every juſtice, ſheriff, under ſheriff, and mayor, ſhall on notice or knowledge of any unlawful, riotous, and tumultuous aſſembly of perſons to the number of 12 or more, together with ſuch help as he ſhall command, reſort to the place. *ſ.* 2, 3.

Whereupon he ſhall, amongſt the rioters, or as near to them as he can ſafely come, with a loud voice command,

or

or cauſe to be commanded, ſilence to be, while proclamation is making; and after that, ſhall openly and with loud voice make or cauſe to be made proclamation in theſe words, or like in effect:

Our ſovereign lord the king chargeth and commandeth all perſons being aſſembled, immediately to diſperſe themſelves, and peaceably to depart to their habitations, or to their lawful buſineſs, upon the pains contained in the act made in the firſt year of king George *for preventing tumults and riotous aſſemblies: God ſave the king.* ſ. 2.

And if any perſon ſhall with force and arms wilfully oppoſe, hinder, or hurt any perſon that ſhall begin or go to make the proclamation, whereby the ſame ſhall not be made, he ſhall be guilty of felony without benefit of clergy. *ſ.* 5.

And if any 12 or more of them ſhall continue together by the ſpace of one hour after ſuch proclamation made, or after ſuch hindrance (having knowledge thereof), they ſhall be guilty of felony without benefit of clergy. *ſ.* 1, 5.

And every juſtice, ſheriff, under ſheriff, mayor, high and petty conſtable, and other peace officer, and every other perſon of age and ability commanded by them to aſſiſt, ſhall apprehend the offenders, and carry them before a juſtice, to be proceeded againſt according to law. And if any rioters be killed or hurt by any the ſaid perſons in diſperſing or apprehending them, by reaſon of their reſiſtance, ſuch perſons ſhall be indemnified. *ſ.* 3.

Alſo, if any rioters (altho' under the number of 12, and whether any proclamation be made or not) ſhall unlawfully and with force demoliſh or pull down, any church or chapel, or any building for religious worſhip certified and regiſtred according to the act of toleration, or any dwelling houſe, barn, ſtable, or other outhouſe, they ſhall be guilty of felony, without benefit of clergy. *ſ.* 4. And any one juſtice may proceed againſt them, as againſt other felons.

And the hundred, city, or town, ſhall anſwer the damages thereof, as in caſes of robbery. *ſ.* 6.

Proſecutions on this act, to be within 12 months after the offence. *ſ.* 8.

V. How by two juſtices.

1. *If any riot, aſſembly, or rout of people, againſt the law, be made; the juſtices, three, or two of them at the leaſt, and the ſheriff, or under ſheriff, ſhall come with the power of the county, if need be.* 13 H. 4. c. 7. ſ. 1.

And

And *the king's liege people, being ſufficient to travel, ſhall be aſſiſtant to them, upon reaſonable warning, to ride with them in aid to reſiſt ſuch riots, routs, and aſſemblies; on pain of impriſonment, and to make fine and ranſom to the king.* 2 H. 5. c. 8. ſ. 2.

If any riot, aſſembly, or rout of people, againſt the law, be made] It is ſaid, that the juſtices are not only impowered hereby, to raiſe the power of the county to aſſiſt them, in ſuppreſſing a riot which ſhall happen within their own view or hearing, but alſo that they may ſafely do it upon a credible information given them of a notorious riot happening at a diſtance, whether there were any ſuch riot in truth or not; for it may be dangerous for them to ſtay till they can get certain information of the fact: But they ſeem to be puniſhable for alarming the county in this manner, without ſome ſuch probable ground of their proceeding, as would induce a reaſonable man to think it neceſſary and convenient. 1 *Haw.* 161.

Aſſembly] It ſeems clear from hence, that if the juſtices in going towards the place where they have heard that there is a riot, ſhall meet perſons coming from thence riotouſly arrayed, they may arreſt them for being aſſembled together in ſuch an unlawful manner, and alſo make a record thereof; for the ſtatute extends to all other unlawful aſſemblies whatſoever as well as to riots. 1 *Haw.* 161.

The king's liege people] Except women, clergymen, perſons decrepit, and infants under the age of fifteen. 1 *Haw.* 161.

To reſiſt ſuch riots] And alſo to arreſt the rioters, and conduct them to priſon. 1 *Haw.* 161.

2. *And ſhall arreſt them.* 13 H. 4. c. 7. ſ. 1.

And if they ſhall eſcape, they may take them on a freſh purſuit; but they cannot at another time award any proceſs againſt them on the record, but ought to ſend the record into the king's bench, that proceſs may iſſue thereon from thence: Yet there ſeems to be no doubt, but that they may arreſt them for their treſpaſs on the aforeſaid ſtatute of the 34 *Ed.* 3. in order to compel them to find ſureties for their good behaviour. 1 *Haw.* 162.

3. *And the ſame juſtices and ſheriff, or under ſheriff, ſhall have power to record* (B) *that which they ſhall find ſo done in their preſence againſt the law: by which record the offenders ſhall be convict in the ſame manner and form as is contained in the ſtatute of forcible entries.* (C) 13 *H.* 4. *c.* 7. *ſ.* 1.

Shall

Shall have power to record] And this they may do, whether the offenders be in cuſtody at the ſame time, or have eſcaped. 1 *Haw.* 161.

Shall be convict] And it ſeemeth to be certain, that the record of a riot, expreſly mentioned to have happened within the view of the juſtices by whom it is recorded, is a conviction of ſo great authority, that it can no way be traverſed, however little ground of truth there might be to affirm, that any riot at all was committed, or however innocent the parties may be of the fact recorded againſt them. 1 *Haw.* 162.

However it ſeemeth clear, that if in ſuch a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or reſcous, the party ſhall be concluded thereby as to the riot only, and not as to any of the other matters; becauſe the juſtices have by this ſtatute a judicial authority over no other offences, except riots, routs, and unlawful aſſemblies. 1 *Haw.* 162.

And inaſmuch as ſuch a record is a final conviction of the parties, as to all ſuch matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of perſons concerned therein, and the ſeveral kinds of weapons made uſe of by them, and all other circumſtances of the fact; for ſince the parties are concluded from denying the truth of ſuch a record, and have no other remedy to defend themſelves againſt it, but only by advantage of the inſufficiency of what is contained in it, they may juſtly demand the benefit of excepting to it, if it do not expreſly ſhew, both that they are guilty within the meaning of the ſtatute, and alſo how far they are guilty, and that the juſtices have purſued the power given them by the ſaid ſtatutes: and from the ſame ground it ſeems alſo to follow, that ſuch a record may be excepted againſt, if it do not appear to have been made by the ſheriff or under ſheriff in concurrence with the juſtices. 1 *Haw.* 162.

And this record ought to remain with one of the juſtices, and ſhall not be left amongſt the records of the ſeſſions, it being made out of ſeſſions, and not appointed to be certified thither. *Dalt. c.* 82.

In the ſame manner and form as is contained in the ſtatute of forcible entries] That is, the ſtatute of the 15 *R.* 2. *c.* 2. And hereupon it is ſaid, that the offenders being under the arreſt of the juſtices, and alſo convicted by a record of their offence, ought immediately to be committed to gaol by the ſame juſtices, till they ſhall make fine and ranſom to the king;

king; which can be aſſeſſed by no other juſtices of the peace, except thoſe by whom the record of the offence was made. 1 *Haw.* 162.

And this fine, Mr. *Dalton* ſays, the juſtices ſhall cauſe to be eſtreated into the exchequer, that ſo it may be levied to the king's uſe; and then they are to deliver the offenders again. *Dalt. c.* 82.

But Mr. *Hawkins* ſays, that it hath been queſtioned, whether the juſtices can ſafely diſmiſs the offenders upon their paying ſuch a fine as ſhall be impoſed upon them, without ſome judgment for their impriſonment as well as fine; becauſe it is enacted by the 2 *H.* 5. *c.* 8. that ſuch rioters attainted of great and heinous riots, ſhall have one whole year's impriſonment at the leaſt, without being let out of priſon by bail or mainprize; and that the rioters attainted of petty riots, ſhall have impriſonment as beſt ſhall ſeem to the king or to his council. 1 *Haw.* 164.

4. And *if the offenders be departed before the coming of the ſaid juſtices and ſheriff or under ſheriff, the ſame juſtices, three, or two of them, ſhall diligently inquire* (D) *within a month after ſuch riot, aſſembly, or rout of people ſo made, and thereof ſhall hear and determine according to the law of the land.* 13 H. 4. c. 7. ſ. 1.

The ſame juſtices] It is generally ſaid, that any juſtices of the county may take ſuch an inquiry, whether they dwell near the place where the riot happened, or at a diſtance, or whether they went to view the riot or not; for the ſtatute ought to be conſtrued as largely as the words will bear, in favour of the juſtices power in the ſuppreſſing of ſuch riots; and therefore thoſe words in the ſtatute that *the ſame juſtices ſhall inquire*, ought to be thus expounded, that the ſame juſtices who were before impowered to raiſe the poſſe, ſhall inquire, and that is, any juſtices in the county. 1 *Haw.* 163.

Shall diligently inquire] That is, by a jury: In order to which, it is enacted by the 19 *H.* 7. *c.* 13. that the ſheriff, on their precept directed to him, ſhall, on pain of 20 *l.* return 24 perſons, whereof every of them ſhall have lands and tenements within the ſhire, to the yearly value of 20 *s.* of charter land or freehold, or 26 *s.* 8 *d.* of copyhold, or of both, over and above all charges: And he ſhall return upon every juror in iſſues, at the firſt day 20 *s.* and at the ſecond 40 *s.*

Note; *Charter land* had its name from a particular form in the charter or deed, which ever ſince the reign of *H.* 8. hath been diſuſed. 1 *Inſt.* 6.

Within a month] That is, if they do not make inquiry within a month, they are puniſhable for the neglect; yet they may inquire after the month: for the lapſe of a month doth not determine their authority, but only ſubjects them to a penalty. 2 *Salk.* 593.

Shall hear and determine according to the law of the land] And therefore they may award proceſs under their own teſte, againſt thoſe who ſhall be indicted before them of any of the offences abovementioned, according to the form of this ſtatute; and alſo may award the like proceſs for the trial of a traverſe of ſuch an inquiſition; and do all other things in relation thereunto, which are of courſe incident to all courts of record. 1 *Haw.* 163.

And the riot being ſo found by inquiſition, the juſtices muſt make a record thereof in writing of ſuch their inquiry or preſentment found before them; which record alſo is to remain with one of the juſtices. *Dalt. c.* 82.

5. And *if the truth cannot be found in the manner as is aforeſaid, then within a month then next following, the juſtices, three, or two of them, and the ſheriff or under ſheriff, ſhall certify before the king and his council, all the deed and circumſtances thereof; which certificate ſhall be of like force as the preſentment of* 12 *men; upon which certificate the offenders ſhall be put to anſwer, and ſhall be puniſhed according to the diſcretion of the king and his council.* 13 H. 4. c. 7. ſ. 2.

And if they do traverſe the matter ſo certified, the certificate and traverſe ſhall be ſent into the king's bench to be tried. id. ſ. 3.

And if the offence be not found, by reaſon of any maintenance or embracery of the jurors, then the ſame juſtices and ſheriff or under ſheriff ſhall in the ſame certificate certify the names of the maintainers and embracers, with their miſdemeanors. 19 H. 7. c. 13.

Shall certify] And it ſeemeth certain, that ſuch certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riot and maintenance. 1 *Haw.* 165.

Before the king and his council] It ſeems clear, by the council being here diſtinguiſhed both from the chancery and king's bench, that the certificate ought to be made to the privy council board, and not to either of thoſe courts, which in ſome ſtatutes relating to judicial proceedings are taken for the king's council. 1 *Haw.* 165.

6. *And*

6. *And the ſaid juſtices and other officers ſhall execute their offices aforeſaid at the king's coſts, in going and continuing in doing their ſaid offices, by payment thereof to be made by the ſheriff by indentures betwixt the ſaid ſheriff and juſtices, and other officers aforeſaid, whereof the ſheriff upon his account in the exchequer ſhall have due allowance.* 2 H. 5. c. 8.

In order to the defraying of which, the ſaid ſtatute directs the fines of the offenders to be inlarged; and thereout the ſheriff may pay the charges of the ſaid juſtices; and of the jury, that is, for their diet; and the ſheriff's fees, and the like. *Dalt. c.* 82.

7. And *the juſtices dwelling nigheſt in the county, where ſuch riot, aſſembly, or rout ſhall be, together with the ſheriff or under ſheriff, ſhall do execution of the ſaid ſtatute of the* 13 H. 4. *every one upon pain of* 100 l. *to the king.* ſ. 4.

The juſtices dwelling nigheſt] Altho' theſe only are liable to this penalty, yet if any others on notice ſhall neglect to ſupply their default, they are fineable at diſcretion. 1 *Haw.* 166.

But if any juſtices, who do not dwell neareſt to the place, do actually execute the ſtatute, they excuſe all the reſt. 1 *Haw.* 165.

Dwelling nigheſt in the county] Therefore if they dwell nigheſt, but in another county, they are not in danger of this penalty. 1 *Haw.* 165.

Shall do execution of the ſaid ſtatute] That is, in the whole, and not in part only; as by recording a riot, and not committing the parties. 1 *Haw.* 166.

VI. How by proceſs out of chancery.

By the 2 *H.* 5. *c.* 8. *If default be found in the two juſtices, ſheriff, or under ſheriff, then at the inſtance of the party grieved, a commiſſion ſhall be iſſued under the great ſeal, to inquire as well of the truth of the caſe for the complainant, as of ſuch default.*

And by the 2 *H.* 5. *c.* 9. and 8 *H.* 6. *c.* 14. *Rioters ſhall be taken by writ and proclamation out of chancery, on ſuggeſtion of two juſtices and the ſheriff, of the common fame of ſuch riot.*

A. Indictment for a riot.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, that* A. O. *late of the pariſh of* ——— *in the county of* —— *yeoman,* B. O. *late of the ſame, yeoman,* C. O. *late of the ſame, yeoman, and divers other perſons (to the jurors aforeſaid as yet unknown) on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *at the pariſh aforeſaid, in the county aforeſaid, with force and arms, unlawfully, riotouſly, and routouſly did aſſemble and gather together, to diſturb the peace of our ſaid lord the king; and ſo being then and there aſſembled and gathered together, in and upon one* A. I. *in the peace of god and of our ſaid lord the king then and there being, unlawfully, riotouſly, and routouſly, did make an aſſault, and him the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did beat, wound, and ill treat, and other wrongs to the ſaid* A. I. *then and there unlawfully, riotouſly, and routouſly did; to the great damage of the ſaid* A. I. *and againſt the peace of our ſaid lord the king, his crown and dignity.*

B. Record of a riot on view.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *We* J. P. *and* K. P. *eſquires, two of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and* A. S. *knight, ſheriff of the ſaid county, at the complaint and requeſt of* A. I. *of* ——— *in the county aforeſaid, yeoman, in our proper perſons have come to the manſion houſe of him the ſaid* A. I. *in* ——— *aforeſaid, and then and there do find* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors and diſturbers of the peace of our ſaid lord the king to us unknown, to the number of* 11 *perſons, in a warlike manner arrayed, to wit, with clubs, ſwords, and guns unlawfully, riotouſly, and routouſly aſſembled, and the ſame houſe beſetting, many evils againſt him the ſaid* A. I. *threatning, to the great diſturbance of the peace of our ſaid lord the king, and terror of his people, and againſt the form of the ſtatute in that caſe made and provided. And therefore we the aforeſaid* J. P. K. P. *and* A. S. *the aforeſaid* A. O. B. O. *and* C. O. *do then and there cauſe to be arreſted, and to the next gaol of our ſaid lord the king in the county aforeſaid to be conveyed, by our view and record of the unlawful aſſembly, riot, and rout aforeſaid convicted, there to remain every and each of them reſpectively, until*

they

they ſhall ſeverally and reſpectively have paid to our ſaid lord the king the ſeveral ſum of 10*l. each, which we do impoſe upon them and every of them ſeparately for their ſaid offence. In teſtimony whereof, to this our preſent record we do put our ſeals. Dated at* ——— *aforeſaid, the day and year aforeſaid.*

C. Commitment of the rioters upon view.

Weſtmorland. J. P. *and* K. P. *eſquires, two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and* A. S. *knight, ſheriff of the ſaid county; To the keeper of the gaol of our ſaid lord the king at* ——— *in the ſaid county, and to his deputy and deputies there, and to every of them, greeting.*

Whereas upon complaint made unto us by A. I. *of* ——— *yeoman, we did this preſent* ——— *day of* ——— *go to the houſe of the ſaid* A. I. *at* ——— *aforeſaid, and there did ſee* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, and other malefactors to us unknown, aſſembled together in an unlawful, routous, and riotous manner, to the terror of the people, and againſt the peace of our ſaid lord the king, and againſt the form of the ſtatute in that caſe made and provided: We do therefore ſend you, by the bringers hereof, the bodies of the ſaid* A. O. B. O. *and* C. O. *convicted of the ſaid riot, rout, and unlawful aſſembly, by our own view, teſtimony, and record; commanding you in the name of our ſaid lord the king, to receive them into the ſaid gaol, and them and every of them reſpectively there ſafely to keep, until they and every of them ſhall reſpectively pay to our ſaid lord the king, the ſeveral and reſpective ſum of* 10*l. each, which we have ſet and impoſed upon them, and each and every of them ſeparately for the ſaid offence. Given under our hands and ſeals at* ——— *aforeſaid, in the county aforeſaid, the day and year aforeſaid.*

D. Precept to ſummon a jury.

Weſtmorland. J. P. *and* K. P. *eſquires, two of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other midemeanors in the ſaid county committed, To the ſheriff of the ſaid county, greeting. On the behalf of our ſaid lord the king we command you, that you cauſe to come before us at* ——— *in the county aforeſaid, on the* ——— *day of* ——— *next enſuing,* 24 *honeſt and lawful men of the county aforeſaid, every one of which to have*

lands

lands and tenements within the ſaid county to the yearly value of 20 s. *of charter land or freehold, or of* 26 s. 8 d. *of copyhold, or of both, over and above all charges, to inquire for our ſaid lord the king, and for our indemnity in this behalf, upon their oath, of certain riots, routs, and unlawful aſſemblies, at* ——— *in the county aforeſaid, lately committed, as it is ſaid; And that you return upon every perſon ſo by you to be impanelled* 20 s. *of iſſues at the aforeſaid day, to be by them reſpectively forfeited if they ſhall not appear and be ſworn to inquire of the premiſſes at the ſaid time and place. And this you ſhall in no wiſe omit, on pain of* 20 l. *Given under our hands and ſeals at* ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Jurors oath.

YOU *ſhall true inquiry and preſentment make of all ſuch things as ſhall come before you, concerning a riot, rout, and unlawful aſſembly ſaid to have been lately committed at* ——— *in this county; you ſhall ſpare no one for favour or affection, nor grieve any one for hatred or ill will, but proceed herein according to the beſt of your knowledge, and according to the evidence that ſhall be given to you; So help you god.*

The oath which your foreman hath taken on his part, you and every of you ſhall well and truly obſerve and keep on your parts: So help you god.

The inquiſition, indictment or preſentment of the jury.

Weſtmorland. AN *inquiſition for our lord the king, indented and taken at* ——— *in the county, aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by the oath of* ——— *honeſt and lawful men of the county aforeſaid, before* J. P. *and* K. P. *eſquires, juſtices of our ſaid lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, who ſay upon their oath aforeſaid, that* A. O. *of* ——— *yeoman,* B. O. *of* ——— *yeoman,* C. O. *of* ——— *yeoman, together with other malefactors and diſturbers of the peace of our ſaid lord the king, to the jurors aforeſaid as yet unknown, on the* ——— *day of* ——— *now laſt paſt at* ——— *aforeſaid, in the county aforeſaid, with force and arms, to wit, with clubs, ſwords, and guns, unlawfully, routouſly, and riotouſly did aſſemble, to diſturb the peace of our ſaid lord the king; and ſo being then and there aſſembled and gathered together,*

the manſion houſe of A. I. *yeoman, at* ——— *aforeſaid, unlawfully, routouſly, and riotouſly did enter, and in and upon him the ſaid* A. I. *then and there unlawfully, routouſly, and riotouſly did make an aſſault, and him the ſaid* A. I. *then and there unlawfully, routouſly, and riotouſly did beat, wound, and ill treat, in diſturbance of the peace of our ſaid lord the king, and to the terror of his people, and againſt the form of the ſtatute in ſuch caſe made and provided.*

We whoſe names are hereunto ſet, the aboveſaid jurors, do find this inquiſition true;
A. B.
C. D. &c.

We the juſtices aboveſaid do hereby impoſe the fines here under written, on the aboveſaid offenders;
A. O. 20 *l.*
B. O. 20 *l.*
C. O. 20 *l.*

Rivers and navigation.

Deſtroying locks and ſluices.

1. BY the 8 *G.* 2. *c.* 20. If any perſon ſhall wilfully or maliciouſly pluck up, throw down, or otherwiſe deſtroy any lock, ſluice, floodgate, or other works on any navigable river, erected by authority of parliament; he ſhall be guilty of felony without benefit of clergy: And the hundred ſhall anſwer damages, not exceeding 20 *l.*

Filling up havens.

2. And by the 19 *G.* 2. *c.* 22. If any perſon acting as maſter of a ſhip, ſhall caſt out, or there ſhall be caſt out, of any veſſel being within any haven, road, channel, or navigable river, any ballaſt, or rubbiſh, but only on the land where the tide never comes; any one juſtice near the place, may ſummon the maſter or owner, or other perſon acting as ſuch, againſt whom the information ſhall be made, or iſſue his warrant to bring him before him; and upon due proof made, either by confeſſion of the party offending, or on view of ſuch juſtice, or oath of one witneſs, that any ballaſt or rubbiſh hath been caſt out, the maſter, or perſon acting as ſuch, ſhall be adjudged the offender, and ſhall forfeit not above 5 *l.* nor under 50 *s.* half to the informer, and half to the poor of the pariſh or place where ſuch conviction ſhall be pronounced: To be levied by diſtreſs of the goods of the perſon ſo convicted, or of the ſhip

or

or tackle; and the ſame, if not redeemed in 5 days, to be ſold, rendring the overplus if any be, after demand in writing, charges of diſtreſs and ſale being firſt deducted. For want of ſufficient diſtreſs, to be committed to gaol or to the houſe of correction where the conviction ſhall be, for two months, or till payment of the penalties, or ſo much thereof for which the commitment ſhall be.

And as ſoon as any veſſel ſhall be ſunk, ſtranded, or run aſhore, in any harbour, channel, or navigable river, or be brought in, or be there in a ſhattered condition, and permitted to remain there, and the owner or maſter ſhall begin to take down, or carry away any of the rigging or tackle, or if there ſhall not be any perſon to take care of ſuch veſſel; any one juſtice for the county or place, or near which ſuch fact ſhall happen, ſhall on information thereof ſummon the owner, or other perſon having or pretending to have the command thereof, or iſſue his warrant to bring him before him; and on conviction ſhall iſſue his warrant for ſeizing and removing ſuch veſſel, and alſo the rigging, and tackle thereof, in ſuch manner as he ſhall order and direct; if ſuch perſon ſhall not within 5 days give ſatisfactory ſecurity to the juſtice, to clear the harbour of ſuch veſſel, and of all wreck and parts thereof, and pay the charges of ſeizing, removing, and diſpoſing of the veſſel and furniture, then the juſtice ſhall cauſe the hulk and tackle to be ſold, and with the money pay the charges of clearing the place where the veſſel ſhall lie, and of ſeizing, removing, and ſelling the ſame, rendring the overplus to the owner of the manor where the ſame ſhall happen.

Stealing goods on a navigable river.

3. By the 24 *G.* 2. *c.* 45. All perſons who ſhall feloniouſly ſteal any goods of the value of 40 *s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aiding therein, ſhall be excluded from the benefit of clergy.

Robbery.

I. What it is.
II. Widening of highways to prevent robberies.
III. Aſſaulting with intent to rob.
IV. Levying hue and cry on a robbery committed.
V. Hundred when liable to anſwer damages.
VI. Manner of bringing the action againſt the hundred.
VII. Damages how to be levied and applied.
VIII. Reward for apprehending a robber.
IX. Pardon for diſcovering an accomplice.
X. Principal and acceſſary in robbery.
XI. Puniſhment of robbery.
XII. What ſhall be done with the goods of which a perſon is robbed.

I. What it is.

Two kinds of robbery.

1. THERE are two kinds of robbery; from the *perſon*, and from the *houſe:* It is the former of theſe that is treated of under this title: the latter, *viz.* robbery from the houſe, belongeth to the titles **Larceny** and **Burglary.**

Derivation of the word robbery.

2. Robbery, lord *Coke* ſays, is derived from the *French de la robe*, both becauſe they bereave the true man of his *robes*, and alſo for that his money is taken by them from ſome part of his garment, or robes about his perſon. But in truth the word ſeemeth to be much ancienter than the introduction of the *French* into our language; and probably was deduced unto us through the channel of *Saxony* or *Denmark*. *Robber*, in the *Saxon* is *reofere*; in the *Low Dutch*, *roover*; in the *Daniſh*, *roffeure*; by a tranſmutation of the letters *b*, *f*, and *v*, frequent in all kindred languages. The *Gothick* tranſlation of the goſpels uſeth *birauboded un* to ſignify *they robbed*, from *birauban*, *to rob*; which being ſtripped of the prefix argumentative is *rauban*. The *Saxons* expreſſed the ſame by *bereafodon*, which we ſtill preſerve when we ſay *they bereaved:* and in the northern parts of *England*, the words *robbing* and *reaving* are ſtill uſed promiſcuouſly to ſignify rapine and plunder; and when the violent winds

do

do ſtrip a houſe of its thatch or covering, it is called *reeving*.

3. Robbery *is a felony by the common law, committed by a violent aſſault upon the perſon of another, by putting him in fear, and taking from his perſon, his money or other goods, of any value whatſoever.* 3 Inſt. 68. Definition of robbery.

From his perſon] Taking a thing in a man's preſence, is in law a taking from the perſon. *Hale's Pl.* 73. *Str.* 1015. *K.* againſt *Francis* and others.

Thus, if one take or drive my cattle out of my paſture, in my preſence, this is robbery, if he make an aſſault upon me, or put me in fear. *Hale's Pl.* 73.

II. Widening of highways to prevent robberies.

Highways leading from one market town to another, ſhall be enlarged, ſo that there be neither dyke, tree, nor buſh, except aſhes or great trees, whereby a man may lurk to do hurt, within 200 foot of each ſide. And if by default of the lord, that will not avoid the dyke, underwood, or buſhes, any robberies be done, the lord ſhall be anſwerable for the felony; and if murder be done, the lord ſhall make a fine at the king's pleaſure. And if a park be taken from the highway, it ſhall be ſet at 200 foot diſtance; or elſe a fence ſhall be made, ſo as offenders may not paſs nor return to do evil. 13 *Ed.* 1. *ſt.* 2. *c.* 5. Wood near highways.

It is obſervable, that when this act was made, the country was fuller of wood than it is at preſent.

III. Aſſaulting with intent to rob.

1. If any perſon ſhall with any offenſive weapon aſſault, or by menaces, or in any forcible or violent manner, demand any money or goods, with a felonious intent to rob him, he ſhall be guilty of felony, and be tranſported for 7 years. 7 *G.* 2. *c.* 21. Aſſaulting with intent to rob.

2. If any perſon be indicted, or appealed, for killing any perſon attempting to rob, he ſhall be acquitted. 24 *H.* 8. *c.* 5. Killing a perſon intending to rob.

IV. Levying hue and cry on a robbery committed.

Immediately upon robberies committed, freſh ſuit ſhall be made from town to town, and from county to county. 13 *Ed.* 1. *ſt.* 2. *c.* 1. Hue and cry.

V. Hundred when liable to anſwer damages.

Hundred ſhall anſwer.

1. The hundred where the offence was committed, ſhall be anſwerable for the robberies, and for the damages, if the offender be not taken. 13 *Ed.* 1. *ſt.* 2. *c.* 2. 28 *Ed.* 3. *c.* 11.

Hundred neglecting hue and cry, ſhall contribute.

2. But ſuch hundred may recover back half the damages, from any other hundred where freſh ſuit after hue and cry ſhall not be made. 27 *El. c.* 13. *ſ.* 2.

Hundred not anſwerable, if a robber is apprehended.

3. But the hundred ſhall not be chargeable, if one robber be apprehended in 40 days from the publication in the gazette; as is hereafter mentioned. 8 *G.* 2. *c.* 16. *ſ.* 3.

Nor for a robbery in a new highway.

4. Alſo, a new highway changed for an ancient one, without a writ of *ad quod damnum*, and an inquiſition found thereon, is ſaid to be not ſuch a highway, in which the inhabitants are bound to watch, nor to make amends for a robbery therein committed. 1 *Haw.* 202.

Nor if on the lord's day.

5. Likewiſe if any perſon, which ſhall travel upon the lord's day, ſhall be then robbed, the hundred ſhall not be liable: nevertheleſs they ſhall make hue and cry, on pain of forfeiting to the king as much as might have been recovered againſt the hundred, if the robbery had not been on the lord's day. 29 *G.* 2. *c.* 7. *ſ.* 5.

Which ſhall travel] *M.* 7 *G. Teſhmaker* againſt the hundred of *Edmington*. The plaintiff lived a mile from the church, and going thither with his lady in his coach upon a *ſunday*, was robbed; and brought his action againſt the hundred, and recovered; for the ſtatute extends only to the caſe of *travelling*: but *Pratt* Ch. J. ſaid, if they had been going to make viſits, it might have been otherwiſe. *Str.* 406.

Nor if it be in an houſe.

6. Alſo, if any man be robbed in his houſe, the hundred ſhall not be charged therewith, whether it were done by day or night; becauſe every man's houſe is his caſtle, which he ought to defend; and if any one is robbed in his houſe, it ſhall be eſteemed his own fault. *Dalt. c.* 84.

Nor if it be in the night.

7. Alſo, a robbery done in the night, ſhall not charge the hundred; but yet if it be in the day time, or there be ſo much day light as that one may ſee a man's face, ſo that the robber may be known, tho' it be before the ſun riſing, or after the ſun ſetting, the hundred ſhall anſwer for it. *Dalt. c.* 84.

In what caſe there muſt be two in company.

8. By the 22 *G.* 2. *c.* 24. No perſon ſhall recover againſt the hundred, more than the value of 200 *l.* unleſs the perſons robbed, ſhall at the time of the robbery be together

gether in company, and be in number two at the leaſt, to atteſt the truth of his or their being ſo robbed.

9. And by the yearly land tax acts, no receiver general, or any of his agents employed for carrying any money on account of the ſaid tax, ſhall maintain an action againſt the hundred for being robbed, unleſs the perſons carrying ſuch money, be together in company, and be in number three at the leaſt. In what caſe three in company.

VI. Manner of bringing the action againſt the hundred.

In order to make the hundred liable, theſe things following muſt be done:

1. *The perſon robbed ſhall, with as much convenient ſpeed as may be, give notice thereof, unto ſome of the inhabitants near the place.* 27 El. c. 13. ſ. 11. Notice to the inhabitants.

And tho' that place, where notice is given, be in another hundred or county, yet it is good enough; for a ſtranger may not know the confines of the hundred or county: and that hundred where notice is given muſt make hue and cry, and by that means the hundred where the robbery was committed will ſoon know thereof. *Cro. Ca.* 41, 379. 3 *Salk.* 184.

2. *He ſhall alſo give notice, with as much convenient ſpeed as may be, to a conſtable of the hundred, that is, the high conſtable, or to a conſtable of ſome place near; or leave notice in writing at his houſe, deſcribing therein the felon, and the time and place of the robbery.* 8 G. 2. c. 16. ſ. 1. Notice to a conſtable.

M. 16 *G.* 2. *Ball* againſt the hundred of *Wymerſley.* Upon a caſe made at the aſſizes, it was ſtated, that ſoon after ſix in the morning, the plaintiff was robbed at two miles and a half diſtance from *Northampton*, and the highwayman cut his bridle and ſtirrups, threw them into a ditch, and turned his horſe looſe; that the plaintiff recovered them, remounted, rode through a village called *Cotton*, where he gave no notice, met three men on the road whom he informed of the robbery, and arrived at *Northampton* by ſeven o'clock, and gave notice to an innkeeper there, from whence he went to *Rotherthorpe*, three miles off, where the high conſtable lived, and between eight and nine gave notice. And whether this notice was ſufficient to maintain the action, was the queſtion. And the court on argument held it to be good notice, for the high conſtable is the propereſt perſon to go to, and it is not required that he go to the next conſtable. It appears the plaintiff loſt no time, conſidering the circumſtances he was in; and *Rotherthorpe* is not at ſuch a diſtance, but that it may

come within the meaning of the word *near*. So the plaintiff had judgment. *Str.* 1170.

And every conſtable, to whom ſuch notice ſhall be given, and every high and petty conſtable within the hundred, as ſoon as the ſame ſhall come to his knowledge, by the party robbed, or by any to whom ſuch notice hath been given, ſhall with the utmoſt expedition make and cauſe to be made freſh ſuit and hue and cry after the felons, on pain of 5*l.* with coſts, half to the king, and half to him who ſhall ſue. 8 *G.* 2. *c.* 16. *ſ.* 11, 12. Note; the penalty here is but ſmall; but as the not purſuing hue and cry was alſo an offence at the common law, the offender may be indicted at the common law, and thereupon fined and impriſoned.

Notice in the gazette.

3. The party robbed ſhall alſo, within 20 days, cauſe notice to be given in the gazette deſcribing therein the felon, and the time and place of the robbery, and the goods and effects whereof he was robbed. 8 *G.* 2. *c.* 16. *ſ.* 1.

To be examined on oath.

4. *He ſhall alſo be examined on oath within* 20 *days next before the action brought, before a juſtice in or near the hundred, whether he knows any of the robbers: and if he confeſſes that he does, he ſhall before the action brought, be bound over by the ſaid juſtice to proſecute.* 27 El. c. 13. ſ. 11.

He ſhall alſo be examined] That is, the party robbed, who is to bring the action, ſhall be examined. But here note a diverſity. *T.* 2 *Car. Raymund* and hundred of *Oking*. The *ſervant* was robbed of his maſter's goods, and the ſervant made oath before a juſtice, and the maſter brought the action againſt the hundred. By the court; The action well lies for the maſter; and the ſervant's oath is ſufficient, for it was properly in his notice, that he was robbed, and did not know any of the robbers, and the maſter knows it not that he was robbed, or who were the perſons, but by report of his ſervant; and it would be inconvenient, if the maſter ſhould not bring the action, but the ſervant only; for the ſervant might releaſe, or compound, or diſcontinue the ſuit, and ſo the maſter ſhould have the loſs by his falſhood: therefore the maſter ſhall bring the action, and have his ſervant who was robbed, to be his witneſs. *Cro. Car.* 37.

Within 20 *days next before*] And the time of making ſuch oath muſt be laid in the declaration, for that is traverſable. 3 *Salk.* 184.

Before a juſtice] And if the juſtice ſhall refuſe upon his requeſt, to examine him, an action will lie againſt the juſtice; becauſe he doth not act therein as a judge of record, but

but as a miniſter appointed for the examination by the ſtatute. *Cro. Car.* 211.

Whether he knows any of the robbers] *H.* 19 *G.* 2. *William King* againſt the hundred of *Biſhop's Sutton.* In an action brought againſt the hundred, the oath proved was, that he had *good reaſon to ſuſpect* the fact was done by *Robert Gibbs* and *William Langford*, both of ſuch a pariſh. And a doubt ariſing at the aſſizes, whether this was ſufficient or not, a caſe was made, and twice argued at the bar. And upon the ſecond argument, the court were of opinion, that the examination did not maintain the action. The oath required is a condition precedent, and for the ſake of the hundred, and to prevent ſcreening the offenders. There is a great deal of difference between *ſuſpecting* and *knowing:* a man who *knows* the offender may purpoſely ſtop at the word *ſuſpect*; to avoid being bound to proſecute: and though it would be equivocating, yet it would hardly be perjury aſſignable; it being only a ſuppreſſion of part of the truth. He ſhould have ſaid, *I ſuſpect them to be the men, but I do not know it.* It will be dangerous to let them go out of the words of the act; and therefore the plaintiff failed in the action, and paid the coſts of a nonſuit. *Str.* 1247.

Bond to pay coſts.

5. Alſo before the action be commenced, he ſhall go before the chief clerk, or ſecondary, or the filazer of the county, or the clerk of the pleas of that court wherein ſuch action is intended to be brought, or their deputies, or before the ſheriff of the county, and enter into 100 *l.* bond, to the high conſtable, with two ſufficient ſureties, to pay him coſts, if he (the proſecutor) ſhall be caſt. And no greater fee ſhall be taken for the bond, than 5 *s.* above the ſtamp. 8 *G.* 2. *c.* 16. *ſ.* 1, 2.

Bond to be certified.

6. If bond is taken before the ſheriff, he ſhall immediately certify the ſame in writing, to the reſpective officer abovementioned; which certificate the perſon robbed ſhall deliver to ſuch officer before the action is brought: and he ſhall pay not more than 2 *s.* 6 *d.* fee to the ſheriff for making ſuch certificate, nor more than 2 *s.* 6 *d.* to the officer for receiving and filing the ſame. And the bond ſhall be delivered to the high conſtable *gratis.* 8 *G.* 2. *c.* 16. *ſ.* 2.

Time of bringing the action.

7. All this being done, and 40 days being expired from the day of the publication in the gazette (for if one of the offenders is apprehended within that time, the action will not lie, 8 *G.* 2. *c.* 16. *ſ.* 3.); and alſo a whole year not being expired from the time of the robbery committed (for

if

if a year is expired, in ſuch caſe alſo the action will not lie, by the 27 *El. c.* 13. *ſ.* 9.) But all theſe things being regularly and duly performed, then the action may be brought.

Proceſs to be ſerved on the high conſtable.

8. And the proceſs ſhall be ſerved on the high conſtable only; who ſhall cauſe publick notice thereof to be given in one of the principal market towns on the next market day; and if there is no market town in the hundred, then in ſome pariſh church within the hundred, on the next *ſunday*, immediately after divine ſervice. He ſhall alſo enter appearance, and defend the action, as he ſhall be adviſed. 8 *G.* 2. *c.* 16. *ſ.* 4.

Inhabitants may be witneſſes.

9. On the trial; any inhabitant may be a witneſs for the hundred. 8 *G.* 2. *c.* 16. *ſ.* 15.

VII. Damages how to be levied and applied.

Writ of execution to be ſhewn to two juſtices.

1. If the plaintiff recover, the ſheriff ſhall ſhew the writ of execution to two juſtices (1 Q.) in or near the hundred. 27 *El. c.* 13. *ſ.* 5. 8 *G.* 2. *c.* 16. *ſ.* 4.

And the high conſtable's charge.

2. The high conſtable alſo ſhall cauſe his attorney's bill to be taxed by the proper officer, and ſhall give in to the ſaid juſtices an account thereof, and of his other expences in defending the action, and make due proof of the ſame upon oath, to the ſatisfaction of the ſaid juſtices. 8 *G.* 2. *c.* 16. *ſ.* 4.

Taxation.

3. The ſaid two juſtices ſhall thereupon cauſe a taxation to be made, and levied in 30 days, upon every diviſion within the hundred, by the conſtables, by diſtreſs and ſale. 8 *G.* 2. *c.* 16. *ſ.* 4, 10.

Payment.

4. And the conſtables ſhall in ten days pay the ſame to the ſheriff, and the ſheriff ſhall pay the ſame without fee to the plaintiff for his coſts and damages, and to the high conſtable for his expences. 8 *G.* 2. *c.* 16. *ſ.* 4, 5.

High conſtable to be reimburſed, if the plaintiff is caſt.

5. The high conſtable ſhall in like manner, if he recovers againſt the plaintiff, be reimburſed his expences which ſhall be over and above the coſts to be taxed, and alſo ſuch coſts taxed as he ſhall not be able to recover, by reaſon of the inſolvency of the plaintiff and of his ſureties; which ſhall be paid in ten days to the ſaid two juſtices, or one of them, who ſhall upon requeſt deliver over the ſame to the high conſtable. 8 *G.* 2. *c.* 16. *ſ.* 7, 8.

Return of the writ.

6. And the ſheriff ſhall not be obliged to return the writ of execution, till after 60 days from the time it ſhall be delivered to him; that there may be time for the taxation, aſſeſſment, and collecting the money. 8 *G.* 2. *c.* 16. *ſ.* 6.

VIII. Re-

VIII. Reward for apprehending a robber.

1. Any perſon or perſons apprehending a felon, whereby the hundred becomes indemnified, ſhall have 10*l.* reward paid by the hundred; the ſame to be aſcertained, levied, and paid, by two juſtices (1 *Q.*) in or near the hundred, in ſuch proportions as they ſhall think reaſonable, within the hundred. 8 *G.* 2. *c.* 16. *ſ.* 9. 10*l.* by the hundred.

2. And moreover, every perſon who ſhall apprehend a highwayman, and proſecute him till he be convicted of any robbery committed in or upon any highway, paſſage, field, or open place, ſhall have from the ſheriff of the county where the robbery and conviction was made and done, without paying any fee for the ſame, the ſum of 40*l.* within one month after ſuch conviction and demand thereof made, by tendring a certificate to the ſheriff, under the hand of the judge, certifying the conviction of ſuch felon for a robbery done within the county of the ſaid ſheriff, and alſo that ſuch felon was taken by the perſon claiming the reward. 4 *W.* *c.* 8. *ſ.* 2. 40*l.* by the king.

For which certificate ſhall be paid, for writing and drawing thereof, 5*s.* and no more. 6 *G.* *c.* 23. *ſ.* 8.

And if any diſpute ſhall ariſe between the perſons apprehending, touching their right to the reward, the judge ſhall by the ſaid certificate direct it to be paid unto and amongſt the parties claiming, in ſuch proportions as to him ſhall ſeem juſt and reaſonable. And if the ſheriff ſhall make default of payment, he ſhall forfeit double, with treble coſts. 4 *W.* *c.* 8. *ſ.* 2.

And the ſtreets of *London* and *Weſtminſter*, and of other cities, towns, and places, ſhall be deemed highways as to this matter. 6 *G.* *c.* 23. *ſ.* 8.

3. And as a further reward, ſuch perſon ſhall have moreover the horſe, furniture, and arms, money, or other goods of the robber, that ſhall be taken with him, notwithſtanding the right of the king, or lord of the manor, or of the perſon lending or letting the ſame to hire: but ſaving the right of them from whom they may have been feloniouſly taken. 4 *W.* *c.* 8. *ſ.* 6. And the goods taken with the highwayman.

4. And if a perſon is killed in endeavouring to apprehend ſuch highwayman, the ſheriff ſhall pay the like ſum of 40*l.* without fee, under the like penalty, to the executors or adminiſtrators of the perſon killed; immediately, upon certificate delivered to him under the hand and ſeal of the judge of aſſize for the county where the fact was done, or the two next juſtices, of ſuch perſon being ſo killed: Perſon killed in apprehending a highwayman.

killed: Which certificate, the ſaid judge, or juſtices, upon proof before them made, ſhall give immediately without fee. 4 *W. c.* 8. *ſ.* 3.

Sheriff to be allowed the reward in his accounts.

5. And the ſheriff ſhall have the ſaid rewards allowed to him in his accounts. 4 *W. c.* 8. *ſ.* 4.

IX. Pardon for diſcovering accomplices.

Pardon for diſcovering accomplices.

If any perſon, being out of priſon, ſhall commit any robbery, and afterwards diſcover two or more perſons, who ſhall commit any robbery, ſo as two or more be convicted; he ſhall have the king's pardon for all robberies he ſhall have committed before ſuch diſcovery; which pardon ſhall be likewiſe a bar againſt any appeal for ſuch robbery. 1 *W. c.* 8. *ſ.* 7.

X. Principal and acceſſary in robbery.

Acceſſary.

All that come in company to rob, are principals, tho' one only actually do it. *Hale's Pl.* 72.

XI. Puniſhment of robbery.

Clergy.

1. Robbery is generally excluded from the benefit of clergy. 3 *Inſt.* 68. 2 *Haw.* 351—357. 2 *H. H. c.* 48.

Pardon.

2. And by the 20 *G.* 2. *c.* 52. Robbery is excepted out of the general pardon.

Navy.

3. By the 22 *G.* 2. *c.* 33. Robbery in the navy ſhall be puniſhed with death, or otherwiſe, as a court martial, on conſideration of circumſtances, ſhall find meet.

Reſtitution of goods taken by robbery.

XII. What ſhall be done with the goods of which a perſon is robbed.

1. If the perſon robbed doth not proſecute the robber; if his goods are waived in flight, or ſeized by the king's officers, or lord of the manor, he ſhall not have them reſtored. *Kely.* 49.

2. But if they are not waived in flight, nor ſeized by the king's officers, or lord of the manor, he may take his goods again wherever he finds them, without the formality of reſtitution being awarded, if they be not ſold in open market; and this alſo, altho' he doth not proſecute the robber. *Kely.* 48.

3. But if he ſhall proſecute the robber to conviction; he ſhall have reſtitution, altho' they have been waived, and ſeized, and even ſold in open market. *Kely.* 48.

Notice

Notice in the gazette, before the action brought againſt the hundred.

NOTICE *is hereby given (purſuant to an act of parliament made in the eighth year of the reign of his preſent majeſty king* George *the ſecond, intitled,* An act for the amendment of the law relating to actions on the ſtatute of hue and cry) *that* A. I. *of* ——— *in the county of* ——— *gentleman, on* ——— *the* ——— *day of* ——— *now laſt paſt, between the hours of eight and nine in the forenoon of the ſame day, was overtaken and robbed by two perſons, in the highway between* ——— *and* ——— *in the county of* ——— *one of them being a tall thin man, marked on the face with the ſmall pox, and having on a brown riding coat, and mounted on a black mare; the other a middle ſized man, wearing his own hair of a light brown colour, and riding on a grey gelding; which perſons took from him the ſaid* A. I. *ten guineas in gold, ſeven ſhillings in ſilver, an halfpenny, and a ſilver watch, and then made off.*

Examination of the perſon robbed, before the action brought.

Weſtmorland. THE *examination of* A. I. *of* ——— *in the county aforeſaid, yeoman, taken on oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, dwelling in* [or, *near to*] *the hundred of* ——— *within the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

Who ſaith, that on monday *the* ——— *day of this preſent month of* ——— *between the hours of two and three in the afternoon of the ſame day, at or near a place called* ——— *he was aſſaulted in the highway there leading from* ——— *to* ——— *by two horſemen, whereof one was a tall luſty man, wearing a black wig, and a blue grey coat, mounted on a bay gelding about fifteen hands high, with a black mane and tail, and ſtar in his forehead; and the other a middle ſized man, of a ſwarthy complexion, having a large ſcar on his left cheek, having on a dark brown riding coat, and mounted on a black gelding; and by them robbed in the highway aforeſaid of the ſum of* ——— *in money, one ſilver watch of the value of* 4 l. *and one pocket book: And that he the ſaid* A. I. *at the time of the ſaid robbery committed, did not know, nor yet doth know, either of the ſaid perſons who committed the ſame: And that he is ſince informed, that the ſaid highway and place where he*

was

was ſo robbed as aforeſaid, are in the pariſh of ——— *and within the hundred of* ——— *in the ſaid county.*

Taken, made, and ſigned the day and year above written, A. I.

Before me

J. P.

Indictment for a robbery.

Weſtmorland. THE *jurors for our lord the king upon their oath preſent, That* A. O. *late of* ——— *in the county of* ——— *labourer, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *with force and arms, at* ——— *in the county of* ——— *in the king's highway there, upon one* A. I. *in the peace of god and of our ſaid lord the king then and there being, feloniouſly did make an aſſault, and him the ſaid* A. I. *in bodily fear and danger of his life, in the highway aforeſaid, then and there feloniouſly did put, and one gold watch of the value of* ——— *of the goods and chattels of him the ſaid* A. I. *from the perſon, and againſt the will of the ſaid* A. I. *in the highway aforeſaid, then and there feloniouſly and violently did ſteal, take, and carry away; againſt the peace of our ſaid lord the king, his crown and dignity.*

Note, the form of a warrant for apprehending a robber upon freſh ſuit, is inſerted under the title Hue and cry.

Rout. See Riot.

Rum. See Exciſe.

Run goods. See Exciſe.

Sabbath. See Lord's day.

Sail cloth.

BY the 9 *G.* 2. *c.* 37. (which by the 24 *G.* 2. *c.* 52. hath continuance to *Dec.* 25. 1757, *&c.*) every maker of *Britiſh* ſail cloth, ſhall ſtamp his name and place of abode in words at length on every piece; on pain of 10 *l.* on conviction by the oath of one witneſs before one juſtice: And if any perſon ſhall wilfully obliterate the ſtamp, or

ſtamp

ſtamp another perſon's name and place of abode, and not his own, he ſhall forfeit 5 *l.* (and by the 4 *G.* 2. *c.* 27. 10 *l.*) to the informer; by diſtreſs, by warrant of two juſtices.

Sacraments. See Publick worſhip.

Sacrilege. See Larceny, Burglary.

Salmon. See Game.

Salt. See Exciſe.

Sanctuary.

BY the 21 *J. c.* 28. *ſ.* 7. No ſanctuary, or privilege of ſanctuary, ſhall be admitted or allowed in any caſe.

Scavengers.

THE juſtices in any city or market town (not having already proviſion made for them therein by any former law), at their general or quarter ſeſſions, may appoint ſcavengers for cleanſing the ſtreets, and may order the repairing ſuch ſtreets therein as they ſhall judge neceſſary; and for defraying the charges thereof, an aſſeſſment not exceeding 6 *d.* in the pound for one year, may be made, levied, and collected as by their order in ſuch ſeſſions they ſhall appoint; which, being allowed under their hands and ſeals, may (if not paid in 8 days after demand) be levied by their warrant by diſtreſs, rendring the overplus, after deducting the charges of making, keeping, and ſelling ſuch diſtreſs. 1 *G. ſt.* 2. *c.* 52. *ſ.* 9. 9 *G. c.* 18. *ſ.* 3.

There are ſeveral acts which direct the paving and cleanſing the ſtreets in *London* and *Weſtminſter*, and within the bills of mortality, which not being of general concern, are only mentioned in this place; to wit,

22 *C.* 2. *c.* 12.
22 & 23 *C.* 2. *c.* 17.
2 *W. ſeſſ.* 2. *c.* 8.
8 & 9 *W. c.* 37.

Schoolmaſters.

Licence of ſchoolmaſters.

1. NONE ſhall teach ſchool, unleſs allowed by the biſhop, on pain of the cenſures of the church: And curates deſirous to teach, ſhall be licenſed before others, except where there is a publick ſchool founded. *Can.* 77, 78.

Diſſenters teaching without licence.

2. How far ſchoolmaſters, being proteſtant diſſenters, are exempted, as ſuch, from the penalties inflicted by the laws for teaching ſchool without licence, is treated of under the title **Diſſenters.**

Papiſt teaching ſchool.

3. If any papiſt ſhall keep ſchool, or take upon him the education, or government, or boarding of youth, he ſhall be adjudged to perpetual impriſonment. 11 & 12 *W.* *c.* 4. *ſ.* 3.

Schoolmaſter by correction killing his ſcholar.

4. Where a ſchoolmaſter, in correcting his ſcholar, happens to occaſion his death; if in ſuch correction he is ſo barbarous as to exceed all bounds of moderation, he is at leaſt guilty of manſlaughter; and if he make uſe of an inſtrument improper for correction, and apparently endangering the ſcholar's life, as an iron bar, a ſword, or kick him to the ground, and then ſtamp on his belly, and kill him, he is guilty of murder. 1 *Haw.* 73, 74.

Seamen.

FOR apprentices to the ſea ſervice, ſee title **Apprentices.**

In what caſes they may be arreſted.

1. No liſted ſeamen ſhall be taken out of his majeſty's ſervice, by any proceſs, other than for ſome criminal matter, unleſs affidavit be firſt made, that the debt or damage amounts to 20*l.* 1 *G.* 2. *ſt.* 2. *c.* 14. *ſ.* 15.

But the plaintiff may, on notice firſt given to the defendant, enter a common appearance, and proceed to judgment and outlawry, and have execution other than againſt his body. *ſ.* 16.

What offences the court martial may puniſh.

2. No court martial may puniſh or try any offence committed by any ſeaman in his majeſty's ſervice, which ſhall not be committed on the main ſea, or in great rivers beneath the bridges, or in a haven or creek within the juriſdiction of the admiralty; except in the caſe of ſpies, or

of

of mutiny and deſertion, or diſobedience, or of offences committed on land in foreign countries. 22 *G.* 2. *c.* 33. *ſ.* 40.

3. Seamen who have been employed in the king's ſervice ſince the acceſſion of king *George* the ſecond, and not deſerted, may ſet up and exerciſe ſuch trades as they are apt for, in any town or place in *Great Britain* or *Ireland*, without moleſtation (except in *Oxford* or *Cambridge*); and if any perſon is ſued thereupon, and the plaintiff is caſt, ſuch perſon ſhall have double coſts. 22 *G.* 2. *c.* 44. Where they may exerciſe trades.

4. A ſeaman, inſtead of being committed to the houſe of correction, for default of paying the penalty for ſwearing, ſhall be put in the ſtocks for one hour for every ſingle offence, and for any number of offences of which he ſhall be convicted at one and the ſame time, two hours. 19 *G.* 2. *c.* 21. *ſ.* 5. Convicted of ſwearing.

5. A ſeaman having a teſtimonial under the hand and ſeal of a juſtice of the peace, ſetting forth the time and place of landing, and the place to which he is to paſs, and limiting the time of his paſſage, ſhall not be deemed a vagrant, while he continues in the direct way, and within the time limited. 17 *G.* 2. *c.* 5. *ſ.* 3. In what caſe not to be deemed vagrants.

6. No ſeaman employed in his majeſty's ſervice, ſhall have any ſettlement in any pariſh, port town, or other town, by delivery and publication of a notice in writing, unleſs it be after his diſmiſſion out of his majeſty's ſervice. 3 *W.* *c.* 11. In what caſe not to gain ſettlements by notice.

7. The treaſurer, controller, ſurveyor, clerk of the acts, or any of the commiſſioners of the navy, may puniſh ſeamen and others, making diſturbances in the yards or offices, and may bind them to the good behaviour, and to appear at the next aſſizes, or general quarter ſeſſions, to be proſecuted for ſuch offence. 1 *G. ſt.* 2. *c.* 25. *ſ.* 1, 2. Making diſturbance in the yards.

8. Concerning ſeamen in the merchants ſervice, it is enacted by the 2 *G.* 2. *c.* 36. (which by the laſt continuance 23 *G.* 2. *c.* 26. is of force to *March* 25. 1764, *&c.*) No maſter of a ſhip ſhall proceed on a voyage, without agreement in writing with each mariner (apprentices excepted), to be ſigned by ſuch mariner, for wages; on pain of 5 *l.* for each mariner, on conviction before one juſtice by the oath of one witneſs, to be levied by diſtreſs; for want of diſtreſs, to be committed till paid. *ſ.* 1, 2. Seamen in the merchants ſervice.

And if the mariner *deſerts* after he hath ſigned the agreement, he ſhall forfeit the wages due to him at the time of deſerting; and on application from the maſter, owner, or commander of the ſhip, ſuch juſtice may cauſe him to be appre-

apprehended, and if he ſhall refuſe to proceed on the voyage, without ſufficient reaſon to the ſatisfaction of the juſtice, the ſaid juſtice ſhall commit him to the houſe of correction, there to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days. *ſ.* 3, 4.

And if any ſeaman abſent himſelf from his ſhip without leave, he ſhall forfeit for every day's abſence two days pay to *Greenwich* hoſpital, to be deducted by the maſter out of his wages; the ſame to be entred in a book, and ſigned by the maſter and two officers of the ſhip; and the ſame to be paid over to the officer who collects the 6*d.* a month deducted out of ſeamens wages for the ſaid hoſpital. *ſ.* 5, 9.

And if any ſeaman not entring into the king's ſervice, ſhall leave his ſhip before he hath a diſcharge in writing, he ſhall forfeit one month's pay, in like manner. *ſ.* 6.

And the maſter ſhall pay the ſeaman's wages, if demanded, in 30 days after the ſhip is entred at the cuſtom houſe, or at the time of diſcharge, which ſhall firſt happen, deducting out of ſuch wages the aforeſaid forfeitures; on pain of 20*s.* to ſuch ſeaman, to be recovered in like manner as his wages. *ſ.* 7.

Note; The law relating to the recovery of ſuch wages, ſo far as proviſion is made for the ſame by any act of parliament, is treated of under title **Servants.**

Search Warrant.

ALTHO' it is not unuſual for juſtices to grant general warrants, to ſearch all ſuſpected places for ſtolen goods, and there is a precedent in *Dalton* requiring the conſtable to ſearch *all ſuch ſuſpected places as he and the party complaining ſhall think convenient*; yet ſuch practice is generally condemned by the beſt authorities.

Thus lord *Hale*, in his pleas of the crown, ſays, a general warrant to ſearch for felons or ſtolen goods, is not good. *H. Pl.* 93.

Mr. *Hawkins* ſays, I do not find any good authority, that a juſtice can juſtify ſending a general warrant, to ſearch all ſuſpected houſes in general for ſtolen goods: becauſe ſuch warrant ſeems to be illegal in the very face of it; for it would be extremely hard, to leave it to the diſcretion of a common officer, to arreſt what perſons, and ſearch what houſes he thinks fit; and if a juſtice cannot legally grant a blank

blank warrant for the arreſt of a ſingle perſon, leaving it to the party to fill it up, ſurely he cannot grant ſuch a general warrant, which might have the effect of an hundred blank warrants. 2 *Haw.* 82, 84.

Again, lord *Hale*, in his hiſtory of the pleas of the crown, expreſſeth himſelf thus; I do take it, that a general warrant to ſearch in all ſuſpected places is not good; but only to ſearch in ſuch particular places, where the party aſſigns before the juſtice his ſuſpicion, and the probable cauſe thereof; for theſe warrants are judicial acts, and muſt be granted upon examination of the fact. 2 *H. H.* 150.

And therefore, he ſays, he takes it that thoſe general warrants dormant, which are many times made before any felony committed, are not juſtifiable, for it makes the party to be in effect the judge; and therefore ſearches made by pretence of ſuch general warrants, give no more power to the officer or party, than what they may do by law without them. 2 *H. H.* 150.

Likewiſe, upon a *bare ſurmiſe*, a juſtice cannot make a warrant to break any man's houſe, to ſearch for a felon, or for ſtolen goods; for the juſtices being created by act of parliament, have no ſuch authority granted to them by any act of parliament; and it would be full of inconvenience, that it ſhould be in the power of any juſtice of the peace, being a judge of record, upon a bare ſuggeſtion to break the houſe of any perſon, of what ſtate, quality, or degree ſoever, either in the day or night, upon ſuch ſurmiſes. 4 *Inſt.* 177.

But in caſe of a complaint, and oath made, of goods ſtolen, and that the party ſuſpects the goods are in ſuch a houſe, and ſhews the cauſe of his ſuſpicion; the juſtice may grant a warrant to ſearch in thoſe ſuſpected places mentioned in his warrant, and to attach the goods, and the party in whoſe cuſtody they are found, and bring them before him, or ſome other juſtice, to give an account how he came by them, and further to abide ſuch order as to law ſhall appertain. 2 *H. H.* 113, 150.

But in that caſe, lord *Hale* ſays, it is convenient, that ſuch warrant do require the ſearch to be made in the day time; and tho' I will not affirm (ſays he) that they are unlawful without ſuch reſtriction, yet they are very inconvenient without it; for many times under pretence of ſearches made in the night, robberies and burglaries have been committed, and at beſt it creates great diſturbance. 2 *H. H.* 150.

But in caſe not of probable ſuſpicion only, but of poſitive proof, it is right to execute the warrant in the night time, leſt the offenders and goods alſo be gone before morning. *Barl. Search War.*

Furthermore, ſuch warrant ought to be directed to the conſtable, or other publick officer, and not to any private perſon; tho' it is fit the party complaining ſhould be preſent and aſſiſtant, becauſe he knows his goods. 2 *H. H.* 150.

So much for *granting* a ſearch warrant; Next touching the *execution* of it.

Whether the ſtolen goods are in the ſuſpected houſe or not, the officer and his aſſiſtants in the day time may enter, the doors being open, to make ſearch, and it is juſtifiable by this warrant. 2 *H. H.* 151.

If the door be ſhut, and upon demand it be refuſed to be opened by them within, if the ſtolen goods be in the houſe, the officer may break open the door. 2 *H. H.* 151.

If the goods be not in the houſe, yet it ſeems the officer is excuſed, that breaks open the door to ſearch, becauſe he ſearched by warrant, and could not know whether the goods were there, till ſearch made; but it ſeems the party that made the ſuggeſtion is puniſhable in ſuch caſe; for as to him the breaking of the door is *in eventu* lawful or unlawful, to wit, lawful if the goods are there, unlawful if not there. 2 *H. H.* 151.

On the *return* of the warrant executed, the juſtice hath theſe things to do;

As touching the *goods* brought before him, if it appear they were not ſtolen, they are to be reſtored to the poſſeſſor; if it appear they were ſtolen, they are not to be delivered to the proprietor, but depoſited in the hand of the ſheriff or conſtable, to the end the party robbed may proceed, by indicting and convicting the offender, to have reſtitution. 2 *H. H.* 151.

As touching the *party* that had the cuſtody of the goods; if they were not ſtolen, then he is to be diſcharged; if ſtolen, but not by him, but by another that ſold or delivered them to him, if it appear that he was ignorant that they were ſtolen, he may be diſcharged as an offender, and bound over to give evidence as a witneſs againſt him that ſold them; if it appear he was knowing they were ſtolen, he muſt be committed or bound over to anſwer the felony. 2 *H. H.* 152.

Form of a ſearch warrant.

Weſtmorland. { To the conſtable of ——.

WHEREAS *it appears to me* J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the ſaid county, by the information on oath of* A. I. *of* —— *in the county aforeſaid, yeoman, that the following goods, to wit,* ——— *have within two days laſt paſt, by ſome perſon or perſons unknown, been feloniouſly taken, ſtolen, and carried away, out of the houſe of the ſaid* A. I. *at* ——— *aforeſaid, in the county aforeſaid; and that the ſaid* A. I. *hath probable cauſe to ſuſpect, and doth ſuſpect, that the ſaid goods, or part thereof, are concealed in the dwelling houſe of* A. O. *of* —— *in the ſaid county, yeoman: Theſe are therefore, in the name of our ſaid lord the king, to authorize and require you, with neceſſary and proper aſſiſtants, to enter in the day time into the ſaid houſe of the ſaid* A. O. *at* ——— *aforeſaid, in the county aforeſaid, and there diligently to ſearch for the ſaid goods; and if the ſame, or any part thereof, ſhall be found upon ſuch ſearch, that you bring the goods ſo found, and alſo the body of the ſaid* A. O. *before me, or ſome other of the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, to be diſpoſed of and dealt withal according to law. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Self defence. See Homicide.
Self murder. See Homicide.

Servants.

Under this title are alſo comprehended labourers, journeymen, artificers, and other workmen.

Concerning the *ſettlement* of ſervants, ſee title Poor.

I. Who may be compelled to ſerve, and for what term.

II. Rating of wages.

III. Time of working for labourers.

IV. Working in harveſt.

V. Leaving work unfiniſhed.

VI. Teſtimonial.

VII. Servant fleeing into another ſhire.

VIII. Servant aſſaulting his maſter.

IX. How far the maſter is allowed to beat his ſervant.

X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.

XI. Servants firing houſes.

XII. Servant ſtealing his maſter's goods.

XIII. Diſputes between ſilk maſters and their workmen.

XIV. Diſputes between clothiers and their workmen, by divers ſtatutes.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures, by the 1 An. ſt. 2. c. 18. & 13 G. 2. c. 8.

XVI. Diſputes between maſters and their workmen in the leathern manufactures, by the 13 G. 2. c. 8.

XVII. Diſputes between maſters and their workmen in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilken manufactures, by the 22 G. 2. c. 27.

XVIII. Diſputes between maſters and their workmen in the manufacture of clocks and watches, by the 27 G. 2. c. 7.

XIX. Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers, by the 20 G. 2. c. 19.

XX. Ship-

XX. Shipmaſters and their ſeamen.
XXI. Taylors and their workmen within the bills.
XXII. Shoemakers and their workmen within the bills.
XXIII. How far the maſter is anſwerable for the ſervant.

I. Who may be compelled to ſerve, and for what term.

Who compellable to ſerve in trades.

1. NO perſon ſhall retain, or be retained, to work for any leſs term than one whole year, in any of the crafts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, ſheremen, dyers, hoſiers, taylors, ſhoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, ſmiths, farriers, curriers, ſadlers, ſpurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow head makers, butchers, cooks, or millers. 5 *El. c.* 4. *ſ.* 3.

And every perſon unmarried, and every married perſon being under the age of 30 years, and having been brought up in any of the ſaid trades, or that hath uſed any of them by the ſpace of 3 years or more; and not having an eſtate of inheritance or for life of 40 *s.* a year, nor worth 10 *l.* in goods, and ſo allowed by two juſtices of the county where he hath moſt commonly inhabited for one year, under their hands and ſeals, or by the mayor of a town corporate and two aldermen, or (if there are no aldermen) two diſcreet burgeſſes; nor being retained with any perſon in huſbandry, nor in any the aforeſaid trades; nor being lawfully retained in houſhold, or in any office with any nobleman, gentleman, or other according to law; nor having a convenient farm or other holding in tillage;—— ſhall during the time that he ſhall be ſo unmarried, or under the ſaid age of 30 years, on requeſt made by any perſon uſing the art or miſtery wherein the ſaid perſon hath been exerciſed, be retained and ſerve, on pain as hereafter followeth. *ſ.* 11.

And no perſon which ſhall retain any ſervant, ſhall put away his ſaid ſervant, and no perſon retained according to this ſtatute ſhall depart before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed before one juſtice or mayor to whom the party grieved ſhall complain: And no maſter ſhall put away any ſuch ſervant at the end of his term, nor ſhall any ſuch ſervant depart at the end of his term without one quarter's warning, on pain hereafter enſuing. *ſ.* 5, 6.

In huſbandry.

2. Every perſon between the age of 12 and 60, not being lawfully retained, nor apprentice with any fiſherman or mariner haunting the ſeas; nor being in ſervice with any kidder or carrier of corn, grain, or meal for proviſion of the city of *London*; nor with any huſbandman in huſbandry; nor in any city, town corporate, or market town, in any the arts limited by this ſtatute to have apprentices; nor being retained by the year, or half year at leaſt; for getting, melting, fining, working, trying, making of any ſilver, tin, lead, iron, copper, ſtone, ſea coal, ſtone coal, moor coal, or cherk coal; nor being occupied in the making of glaſs; nor being a gentleman born, nor being a ſtudent or ſcholar in any of the univerſities, or ſchool; nor having an eſtate of inheritance, or for term of life, of 40 *s.* a year; nor worth 10 *l.* in goods; nor having a father or mother then living, or other anceſtors, whoſe heir apparent he is, having lands of 10 *l.* a year, or goods worth 40 *l.*; nor being a neceſſary or convenient officer or ſervant lawfully retained as aforeſaid; nor having a convenient farm or holding, whereon to employ his labour; nor being otherwiſe lawfully retained according to the true meaning of this ſtatute,——ſhall be compelled to be retained to ſerve in huſbandry by the year, with any perſon that keepeth huſbandry, and will require any ſuch perſon ſo to ſerve, within the ſame ſhire where he ſhall be ſo required. 5 *El. c.* 4. *ſ.* 7.

And if any perſon, after he hath retained any ſervant, ſhall put him away before the end of his term, unleſs it be for ſome reaſonable cauſe, to be allowed as is aforeſaid; or ſhall put him away at the end of his term, without a quarter's warning; unleſs he can prove by two witneſſes ſuch reaſonable cauſe, or ſuch quarter's warning, before the judges of aſſize, juſtices of the peace in ſeſſions, or the mayor and two aldermen (or two diſcreet burgeſſes if there are no aldermen) in corporations,——he ſhall forfeit 40 *s.* *ſ.* 8.

Penalties.

3. And if any ſervant retained according to this ſtatute ſhall depart from his ſervice before the end of his term, unleſs it be for ſome reaſonable cauſe to be allowed as aforeſaid, or at the end of his term depart without a quarter's warning before two witneſſes; or if any perſon bound to ſerve in huſbandry or other arts above remembred, by the year or otherwiſe, do on requeſt refuſe to ſerve for the wages to be limited, by this ſtatute; or promiſe to ſerve, and do not ſerve,——then, on complaint and conviction before two juſtices, or mayor and two aldermen (or two diſcreet burgeſſes where there are no aldermen) he ſhall be

committed to ward until he ſhall be bound to ſerve and continue for the wages that ſhall be then limited; and to be diſcharged upon his delivery, without any fee to the gaoler. 5 *El. c.* 4. *ſ.* 9.

And the forfeitures not otherwiſe appointed by this act, ſhall be half to the king, and half to him that ſhall ſue in any of the king's courts of record, or before the juſtices of oyer and terminer, or before any other juſtices before remembred; and the ſaid juſtices, or two of them (1 *Q.*) and the ſaid mayors or other head officers, ſhall have power to hear and determine all offences againſt this ſtatute, as well upon indictment in the ſeſſions of the peace, as upon information, action of debt, or bill of complaint; and ſhall yearly in *Michaelmas* term eſtreat the forfeitures into the exchequer, in like manner as other eſtreats. *ſ.* 39.

And all fines and forfeitures which ſhall ariſe by reaſon of any offences in this act, within any city or town corporate, ſhall be levied by ſuch perſon as ſhall be appointed by the mayor or other head officer, to the uſe of the ſame city or town corporate, as other fines and forfeitures by the charter. *ſ.* 45.

Women compellable to ſerve.

4. Two juſtices (or the mayor or other head officer of a town corporate, and two aldermen, or two diſcreet burgeſſes if there be no aldermen) may appoint any ſuch woman as is of the age of 12 years, and under 40, and unmarried, and forth of ſervice, as they ſhall think meet, to ſerve, or be retained to ſerve by the year, or by the week or day, for ſuch wages, and in ſuch reaſonable ſort and manner as they ſhall think meet; and if any ſuch woman ſhall refuſe ſo to ſerve, they may commit her to ward, until ſhe ſhall be bounden to ſerve as is aforeſaid. 5 *El. c.* 4. *ſ.* 24.

And if a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and her huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58. *Wood b.* 1. *c.* 6.

Retainer to be for a year.

5. If a perſon retain a ſervant generally, without expreſſing any time, the law ſhall conſtrue it to be for one year, for that retainer is according to law. 2 *Inſt.* 42.

And if a man retaineth another, except the retainer be according to the ſtatute, it ſeemeth to be void; unleſs it be by indenture, and then being by deed, he is bound by his covenant. *Dalt. Old Ed. c.* 31.

Retainer is the beginning of ſervice.

6. By the retainer, the ſervant is in ſervice preſently by the law, altho' he cometh not into his maſter's ſervice indeed. *Dalt. c.* 58.

7. If

Infant hiring.

7. If a ſervant be within age, his agreement with his maſter to his diſadvantage ſhall not prejudice him. *Dalt. c.* 58.

Married perſon hiring.

8. If a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve according to their covenant or agreement. *Dalt. c.* 58.

Servant falling ſick.

9. If a ſervant retained for a year, happen within the time of his ſervice to fall ſick, or to be hurt or diſabled by the act of god, or in doing his maſter's buſineſs; yet the maſter muſt not therefore put ſuch ſervant away, nor abate any part of his wages for ſuch time. *Dalt. c.* 58.

II. Rating of wages.

Rating wages.

1. The juſtices of every ſhire, riding, and liberty, or the more part of them, being then reſiant within the ſame, and the ſheriff if he conveniently may, and every mayor and other head officer within any city or town corporate, wherein is any juſtice of the peace within the limits of the ſaid city or town corporate, and of the ſaid corporation, ſhall yearly at *Eaſter* ſeſſions, or within ſix weeks next after, aſſemble, and call unto them ſuch diſcreet and grave perſons as they ſhall think meet, and having reſpect to the plenty or ſcarcity of the time, and other circumſtances, ſhall have authority to limit, rate, and appoint the wages as well of ſuch the ſaid artificers, handicraftſmen, huſbandmen, or any other labourer, ſervant, or workman, whoſe wages in time paſt have been by any law or ſtatute rated and appointed, as alſo the wages of all other labourers, artificers, workmen, or apprentices of huſbandry, which have not been rated, as they ſhall think meet by their diſcretions, to be rated, limited, or appointed by the year, or by the day, week, month, or otherwiſe, with meat and drink, or without meat and drink, and what wages every workman or labourer ſhall take by the great, for mowing, reaping, or threſhing of corn and grain, or for mowing or making of hay, or for ditching, paving, railing, or hedging, by the rod, pearch, lugg, yard, pole, rope, or foot, and for any other kind of reaſonable labour or ſervice. 5 *El. c.* 4. *ſ.* 15.

And by the 1 *J. c.* 6. The juſtices, or the more part of them, reſiant in any riding, liberty, or diviſion, where the ſeſſions are ſeverally kept, ſhall have power to rate the wages within ſuch diviſion, as if the ſame were done in the general ſeſſions for the county. *ſ.* 5.

And by the ſame ſtatute of 1 *J. c.* 6. The ſaid act of 5 *El.* ſhall extend to the rating of wages of all labourers,

weavers, ſpinſters, and workmen or workwomen whatſoever, either working by the day, week, month, year, or taking any work by the great or otherwiſe. *ſ.* 3.

But no clothier being a juſtice of the peace in any precinct or liberty, ſhall be a rater of wages for the making of cloth; and if there be not above two juſtices in ſuch precinct, but ſuch as are clothiers, the wages ſhall be rated by the major part of the common council of ſuch precinct, and ſuch juſtices (if any there be) as are not clothiers. *id. ſ.* 9.

And if any juſtice reſiant within the county, or mayor, ſhall be abſent at the rating of wages, and not hindred by ſickneſs or other lawful cauſe, to be allowed by the juſtices then aſſembled for rating of wages, upon the oath and affidavit of ſome credible perſon, he ſhall forfeit to the king 10*l.* to be recovered in the ſeſſions or other court of record, by indictment or otherwiſe. 5 *El. c.* 4. *ſ.* 17.

And the juſtices ſhall yearly, between *Sep.* 29. and *Dec.* 25. and between *March* 25. and *June* 24. make ſpecial and diligent enquiry of the good execution of this ſtatute, and puniſh defaulters; and ſhall have for every day that they ſit about the execution thereof (not exceeding three days at a time) 5*s.* each, out of the forfeitures due to the king. *ſ.* 37, 38.

Rates to be reclaimed.

2. By the aforeſaid act of 5 *El.* the rates were to be certified into the chancery; but by the 1 *J. c.* 6. they need not to be certified into the chancery, but ſhall be kept amongſt the records of the county or town corporate. *ſ.* 8.

And after the ſaid rates are made and ingroſſed in parchment, under the hands and ſeals of the perſons having authority to rate the ſame, the ſheriff, or mayor, may cauſe proclamation thereof to be made, in ſo many places as to them ſhall ſeem convenient; and every perſon ſhall be bound to obſerve the ſame. *id. ſ.* 6.

Giving more than is rated.

3. If any perſon upon the proclamation publiſhed, ſhall directly or indirectly, retain or keep any ſervant, workman, or labourer, or ſhall give any more or greater wages, or other commodity, than ſhall be ſo appointed in the ſaid proclamation; he ſhall on conviction before any of the juſtices or other head officers above remembred, be impriſoned for ten days without bail, and ſhall forfeit 5*l.* half to the king, and half to him that ſhall ſue before the ſaid juſtices in their ſeſſions. 5 *El. c.* 4. *ſ.* 18.

But yet maſters may reward a well deſerving ſervant, over and above his wages, according as he ſhall deſerve, ſo

it

it be not by way of promiſe or agreement upon his retainer. *Dalt. c.* 58.

Taking more.

4. And every perſon that ſhall be ſo retained and take wages contrary to the ſaid ſtatute of the 5 *El.* or to the ſaid proclamation, and ſhall be thereof convicted before the juſtices aforeſaid, or any two of them, or before the mayor or other head officers aforeſaid, he ſhall be impriſoned for 21 days without bail. 5 *El. c.* 4. *ſ.* 19.

Contract to the contrary, void.

5. And every retainer, promiſe, gift, or payment of wages, or other thing, contrary to the ſaid act, and every writing and bond to be made for that purpoſe, ſhall be void. 5 *El. c.* 4. *ſ.* 20.

Paying leſs than is rated.

6. If any clothier, or other, ſhall refuſe to pay ſo much wages to their weavers, ſpinſters, workmen, or workwomen, as ſhall be rated; and be convicted thereof by confeſſion, or oath of two witneſſes, at the aſſizes, or ſeſſions, or before any two juſtices (1 *Q.*); he ſhall forfeit 10 *s.* to the party grieved, to be levied by diſtreſs and ſale. 1 *J. c.* 6. *ſ.* 7.

Ordering the payment of wages.

7. *M.* 1 *An. Q.* and *Gouche.* An order was made by the juſtices for payment of wages, for work and labour in huſbandry: The exception was, That it did not appear to be ſtatute wages, and ſuch only are within their juriſdiction. By the court; Tho' the ſtatute gives them a power only to ſet the rate for wages, and not to order payment; yet grafting hereupon, they have alſo taken upon them to order payment, and the courts of law are indulgent in remedies for wages, and therefore they would intend it ſuch wages as were within the ſtatute, unleſs the contrary appear upon the face of the order. 2 *Salk.* 441.

And in the caſe of *K.* and *Gregory*, 2 *Salk.* 484. There was an order to pay 40 *s.* for wages generally; and becauſe it was not ſaid for wages in huſbandry, it was moved to quaſh it, for that the juſtices can only ſettle wages in huſbandry: But by the court; We will intend it for ſuch wages, ſince the contrary does not appear.

But in the caſe of *K.* and *Helling*, *M.* 3 *G.* There was an indictment for not paying ſervants wages, reciting an order of two juſtices, whereby it appeared, that 9 *l.* was due, which the defendant refuſed to pay, having had notice of the order. It was moved to quaſh the indictment, becauſe it doth not ſet out the labour of the ſervant, and is only generally for wages; the juſtices have only juriſdiction in caſe of huſbandry; and the order ought to ſhew, that this was a matter within their juriſdiction. By *Eyre* J. the practice is, if an order be for paying wages, it is ſuppoſed to be ſuch as the juſtices have power over. But

Parker

Parker Ch. J. and *Pratt* J. were of another opinion. And in the next term following the indictment was quaſhed. *Str.* 8.

And in the caſe of *K.* and *Clegg*, *M.* 8 *G.* It was ſaid by *Forteſcue* J. that in the caſe of ſervants wages, although juriſdiction is given only in huſbandry, yet orders have been held good, where it did not appear that the ſervice was in huſbandry; for the court ſaid they would intend it ſo, unleſs the contrary appeared. But by *Prat* Ch. J. This was always wondred at, and in my lord *Parker*'s time it was actually contradicted in the caſe of *K.* and *Helling*. *Str.* 475.

In *Bycraft*'s caſe, 5 *Mod.* 140. A juſtice made an order for payment of a *ſeaman*'s wages; but in an action brought againſt him, the plaintiff recovered 30 *l.* damages.

M. 8 *An.* 2. and *Cecill.* An order upon a maſter to pay wages in huſbandry, was quaſhed, becauſe it was made upon the ſervant's oath, which is againſt law, and no power given in the ſtatute to admit ſuch oath as evidence. L. *Raym.* 1305.

But by other ſtatutes hereafter following, ſuch oath is allowed as evidence; but upon this ſtatute it was not neceſſary, becauſe in order to intitle the ſervant to wages, he needed not to prove how much his maſter had agreed to pay him, for that was fixed by the juſtices, but only how long he had ſerved, and then the wages followed of courſe; and this might be proved by many others as well as by himſelf.

III. Time of working for labourers.

All artificers and labourers, being hired for wages, by the day, or week, ſhall betwixt the midſt of *March* and *September*, be and continue at their work, from five in the morning till after ſeven at night (except in the time of breakfaſt, dinner, or drinking, which ſhall not exceed two hours and an half in a day, that is to ſay, at every drinking one half hour, for his dinner one hour, and for his ſleep, when he is allowed to ſleep, that is, from the midſt of *May* to the midſt of *Auguſt*, half an hour at the moſt, and at every breakfaſt one half hour:) And all the ſaid artificers and labourers, between the midſt of *September* and the midſt of *March*, ſhall be and continue at their work, from the ſpring of the day in the morning, until night, except it be in the time before appointed for breakfaſt and dinner; on pain to forfeit 1 *d.* for every hour's abſence, to be deducted out of his wages. 5 *El.* *c.* 4. *ſ.* 12.

IV. Working

IV. Working in harveſt.

1. In the time of hay or corn harveſt, the juſtices of the peace, and every of them, and alſo the conſtable or other head officer of every townſhip, upon requeſt, and for avoiding of the loſs of any corn, grain, or hay, ſhall cauſe all ſuch artificers and perſons as be meet to labour, by the diſcretions of the ſaid juſtices or conſtables, or other head officers, or by any of them, to ſerve by the day, for the mowing, reaping, ſhearing, getting, or inning of corn, grain, and hay, according to the ſkill and quality of the perſon; and that none of the ſaid perſons ſhall refuſe to do, on pain to ſuffer impriſonment in the ſtocks, by the ſpace of two days and one night: And the conſtable of the town, or other head officer, on complaint to him made, ſhall ſet him in the ſtocks accordingly, on pain of 40 *s.* half to the king, and half to him that ſhall ſue in the ſeſſions, or other court of record; and if it is in a town corporate, then to the uſe of ſuch town, as other fines by the charter. 5 *El. c.* 4. *ſ.* 22.

Provided, that all perſons of the counties where they have accuſtomed to go into other ſhires for harveſt work, and having at that time no harveſt work ſufficient in the ſame town or county where they dwelt in the winter laſt paſt, bringing with them a teſtimonial under the hand and ſeal of one juſtice of the ſhire, or other head officer of the town or place that they come from, teſtifying the ſame, for which he ſhall pay not above 1 *d.* (other than ſuch perſons as ſhall be retained in ſervice) may repair, in harveſt of hay or corn, into any other county or place for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harveſt works, as they might have done before the making of this act. *ſ.* 23.

2. And by the 13 & 14 *C.* 2. *c.* 12. A perſon may go abroad to work in harveſt, carrying with him a certificate from the miniſter and one churchwarden or overſeer, that he hath a dwelling houſe or place in which he inhabits, and hath left wife and children, or ſome of them there (or otherwiſe as his condition ſhall require) and declaring him an inhabitant there. *ſ.* 3.

And by the vagrant act of the 17 *G.* 2. Perſons carrying with them ſuch certificate, ſhall not be liable to be apprehended as vagrants.

V. Leaving

V. Leaving work unfiniſhed.

Every artificer and labourer, that ſhall be lawfully retained in and for the building or repairing of any church, houſe, ſhip, mill, or other piece of work taken in great, in taſk, or in groſs, or that ſhall take upon him to make or finiſh any ſuch work, ſhall continue and not depart from the ſame, unleſs it be for not paying of his wages or hire agreed on, or otherwiſe lawfully taken or appointed to ſerve the king, or for other lawful cauſe, or without licence of the maſter or owner of the work, or of him that hath the charge thereof, before the finiſhing of the ſaid work, on pain of impriſonment for a month without bail or mainpriſe, and the forfeiture of 5 *l.* to the party from whom he ſhall ſo depart, for the which the ſaid party may have his action of debt in any of the king's courts of record, over and beſides ſuch ordinary coſts and damages as may or ought to be recovered by the common laws, for ſuch offence. 5 *El. c.* 4. *ſ.* 13.

And no other artificer or labourer, retained in any ſervice, to work for the king, or any other perſon, ſhall depart from his ſaid majeſty, or from ſuch other perſon, until the work be finiſhed, if the perſon ſo retaining the artificer or labourer ſo long will have him, and pay him his wages; on pain of impriſonment for one month. *ſ.* 14.

VI. Teſtimonial.

None of the ſaid perſons retained in huſbandry, or in any the arts above remembred, after the time of his retainer expired, ſhall depart forth of one city, town, or pariſh, to another; nor out of the lathe, rape, wapentake, or hundred; nor out of the county where he laſt ſerved, to ſerve in any other city, town corporate, lathe, rape, wapentake, hundred, or county; unleſs he have a teſtimonial under the ſeal of the ſaid city or town corporate, or of the conſtable or other head officer, and of two other honeſt houſholders of the city, town, or pariſh where he laſt ſerved: Which teſtimonial ſhall be in this form,

Memorandum, That A. B. *late ſervant to* C. D. *of* E. *huſbandman, or taylor,* &c. *in the ſaid county, is licenſed to depart from his ſaid maſter, and is at his liberty to ſerve elſewhere, according to the ſtatute in that caſe made and provided. In witneſs whereof,* &c. *Dated the day, month, year, and place,* &c. *of the making thereof:*

Which

Which teſtimonial ſhall be delivered to the ſaid ſervant, and alſo regiſtred by the miniſter of the pariſh where the maſter dwells, taking 2 *d.* for the ſame. 5 *El. c.* 4. *ſ.* 10.

And no perſon that ſhall depart out of a ſervice, ſhall be retained or accepted into any other ſervice, without ſhewing (before his retainer) ſuch teſtimonial, to the chief officer of the town corporate, and in every other town and place, to the conſtable, curate, churchwarden, or other head officer; on pain that every ſuch ſervant ſo departing without ſuch teſtimonial, ſhall be impriſoned till he procure one; which if he cannot do in 21 days, he ſhall be whipped and uſed as a vagabond, according to the laws in ſuch caſe provided; and every perſon retaining ſuch ſervant, without ſhewing ſuch teſtimonial, ſhall forfeit 5 *l.* half to the king, and half to him that ſhall ſue in the ſeſſions or other court of record; and if any ſuch perſon be taken with a counterfeit teſtimonial, then to be whipped as a vagabond. *ſ.* 11.

By the common law, if a man retained another man's ſervant, not knowing that he was retained with him, this ignorance excuſed him of the offence; but now the maſter may, and muſt take notice, whether he hath a teſtimonial or no; otherwiſe, if he hath no teſtimonial, ſuch maſter is liable by this ſtatute to the penalty of 5 *l.* *Dr. & St.* 149.

And it were to be wiſhed, that this good law concerning the teſtimonial were enforced and put in due execution; the want whereof is the only adequate cauſe of the exceſſive dearneſs and inſolence of ſervants which is now ſo univerſally complained of; becauſe it renders all rating of wages utterly vain and ineffectual; for if the wages are limited in one ſhire, the effect of that is no more than driving the ſervants into another ſhire where the wages are not rated: which can only be prevented by a general concurrence in not ſuffering them to depart, or not receiving them, without ſuch licence or teſtimonial.

VII. Servant fleeing into another ſhire.

If any ſervant of huſbandy, or of any art, ſcience, or occupation aforeſaid, flee into another ſhire, it ſhall be lawful for the juſtices of the peace, and the ſaid mayors or other head officers being juſtices of the peace, to iſſue writs of *capias*, directed to the ſheriffs of the counties, or other head officers of the places whither he ſhall flee, to take his body, returnable before them at what time ſhall pleaſe them; ſo that if they come by ſuch proceſs, they be put in priſon

priſon till they ſhall find ſufficient ſurety well and honeſtly to ſerve their maſters. 5 *El. c.* 4. *ſ.* 47.

And by the 24 *G.* 2. *c.* 55. If a juſtice ſhall iſſue a warrant againſt ſuch perſon, and he ſhall eſcape into another ſhire; the conſtable or other perſon, on having the warrant indorſed by a juſtice in ſuch other ſhire, may arreſt him there, and carry him before a juſtice in ſuch other ſhire, if the offence is bailable, to find bail, or elſe ſhall carry him back before a juſtice in the ſhire from whence the warrant did firſt iſſue.

VIII. Servant aſſaulting his maſter.

If any ſervant, workman, or labourer, ſhall wilfully or maliciouſly make an aſſault or affray upon his maſter or miſtreſs, or upon any other having charge or overſight of ſuch ſervant or labourer, or over the work wherein he is hired to work, and ſhall be thereof convicted before any two juſtices, or other head officer aforeſaid, by confeſſion, or oath of two witneſſes, he ſhall be impriſoned for a year, or leſs, by the diſcretion of two juſtices out of a town corporate, and in a town corporate of the mayor or other head officer with two others of the diſcreeteſt perſons of the ſame corporation: And if the offence ſhall require further puniſhment, then to receive ſuch other open puniſhment ſo as it extend not to life or limb, as the juſtices in ſeſſions, or the mayor or other head officer, and ſix or four at leaſt of the diſcreeteſt perſons of the corporation, ſhall think convenient for the quality of the offence. 5 *El. c.* 4. *ſ.* 21.

IX. How far the maſter is allowed to beat his ſervant.

The maſter is allowed by law, with moderation to chaſtiſe his ſervant. *Dalt. c.* 58.

And where a maſter, in correcting his ſervant, happens to occaſion his death, it ſhall be deemed homicide by miſadventure; yet if in his correction he be ſo barbarous, as to exceed all bounds of moderation, and thereby occaſion the ſervant's death, it is manſlaughter at the leaſt; and if he make uſe of an inſtrument improper for correction, and apparently indangering the ſervant's life, as an iron bar, or ſword, or kick him to the ground, and then ſtamp on his belly and kill him, it is murder. 1 *Haw.* 73, 74.

And if the ſervant ſhall depart out of his maſter's ſervice, and the maſter happen after to lay hold of him, yet the

maſter in this caſe may not beat or forcibly compel his ſaid ſervant againſt his will to return or tarry with him, or do his ſervice; but either he muſt complain to the juſtices, for his ſervant's departure, or he may have an action of covenant againſt his ſervant. *Dalt. c.* 121.

X. How far the maſter may beat another in defence of his ſervant, or the ſervant in defence of his maſter.

According to ſome opinions, a maſter ſhall not forfeit a recogniſance of the peace, for beating another in defence of his ſervant, nor the ſervant for beating another in defence of his maſter. 1 *Haw.* 131.

But in the caſe of *Leeward* and *Baſilee*, *M.* 7 *W.* It was held by the court, that a ſervant may juſtify an aſſault in defence of his maſter, but not a maſter in defence of his ſervant; becauſe he might have an action for the loſs of his ſervice. 1 *Salk.* 407.

XI. Servants firing houſes.

If any menial or other ſervant, thro' negligence or careleſſneſs, ſhall fire or cauſe to be fired any dwelling houſe or out houſe, and be convicted thereof by oath of one witneſs, before two juſtices, he ſhall forfeit 100*l.* to the churchwardens, to be diſtributed amongſt the ſufferers by ſuch fire; and if he ſhall not pay the ſame immediately, on demand of the churchwardens, he ſhall be committed by the ſaid juſtices to ſome workhouſe or houſe of correction for 18 months, there to be kept to hard labour. 6 *An. c.* 31. *ſ.* 3.

XII. Servant ſtealing his maſter's goods.

By the 21 *H.* 8. *c.* 7. *If any ſervant to whom any goods ſhall by his maſter or miſtreſs be delivered to be kept, ſhall go away therewith, to the intent to ſteal the ſame; or, being in his maſter or miſtreſs's ſervice, without his or her aſſent, ſhall imbezil or otherwiſe convert the ſame to his own uſe, with like purpoſe to ſteal it, if the ſame be of the value of* 40s. *or above, he ſhall be guilty of felony; but this not to extend to any apprentice, or any perſon within the age of* 18 *years.*

By his maſter or miſtreſs] If the maſter's wife deliver goods of the maſter, to the ſervant to keep, and he goes away with them, it ſeems this is within the ſtatute, for he

he hath them by delivery of his miſtreſs; and the maſter's wife is as well his miſtreſs, as if ſhe were ſole. 1 *H. H.* 668.

Be delivered to be kept] This ſtatute was introductive of a new law, when the goods were actually *delivered* to the ſervant that goes away with them; for where there is ſuch a delivery, it could not at the common law be a felony. 1 *H. H.* 667.

But yet a ſervant may be guilty of felony at common law, if he *take* the goods of his maſter feloniouſly, nay, tho' they be goods under his charge, as a ſhepherd, butler, and the like; and for this he may be indicted at this day as a felony at common law: and of this felony at common law an apprentice, or ſervant under the age of 18 years, may be guilty, and indicted thereof at common law. 1 *H. H.* 667.

And therefore tho' this ſtatute exempt an apprentice or ſervant under 18, from the pain of felony enacted *de novo* by this ſtatute, namely, where goods are actually delivered to him, yet it leaves him in the ſame condition as to any felony at common law, as if he were not excepted; and therefore if a butler or ſhepherd, under the age of 18 years, or if an apprentice take away his maſter's goods feloniouſly, without an actual delivery, tho' they are under the value of 40 *s.* he is indictable of felony at common law. 1 *H. H.* 667, 668.

If a man delivers to his ſervant the key of his chamber door, and the ſervant taketh away his maſter's goods in the chamber (above the value of 12 *d.*) this is felony at the common law, for the goods were *not delivered*. *Dalt. c.* 155.

If a man appoints his ſervant to take and carry corn to market, and to take his horſe to carry the ſame upon, and the ſervant goeth away with the corn or horſe; this is felony in the ſervant, if the goods he ſo goeth away with, be all to the value of 40 *s.* *Dalt. c.* 155.

But if the ſervant waſtefully conſumeth the goods, and returneth again to his maſter, this is no felony. *Dalt. c.* 155.

If the maſter deliver an obligation to his ſervant, to receive the money thereby due, and the ſervant receive the money, and goeth away with the ſame, with intent to ſteal it; this is no offence within this ſtatute, becauſe he had not the money of the delivery of his maſter. 3 *Inſt.* 105.

So if the maſter deliver to his ſervant wares or merchandizes to ſell, and he ſelleth the ſame, and goeth away with the money as before, this is no offence within this ſtatute for the cauſe aforeſaid. 3 *Inſt.* 105.

So if the ſervant receiveth above 40*s.* of his maſter's rents, and run away therewith, it is no felony; for the ſtatute is, where the maſter delivereth it to keep. *Dalt. c.* 155.

But it is held, that if the maſter deliver to the ſervant 20 *l.* in ſilver, to change it into gold at the goldſmith's, or leather to make ſhoes, and he run away with the gold or ſhoes, it is felony. 1 *H. H.* 668.

Shall be guilty of felony] But not without benefit of clergy. But by the 12 *An. ſt.* 1. *c.* 7. Every perſon who ſhall ſteal goods to the value of 40*s.* out of any dwelling houſe, altho' it be not broken open, ſhall be guilty of felony without benefit of clergy: But this not to extend to apprentices under 15 years of age.

And in *Joſhua Cornwall*'s caſe, *M.* 4 *G.* 2. it was adjudged, that a ſervant may be guilty of burglary with reſpect to his maſter's goods, although he did not break and enter, nor take, nor carry the goods away. Which was thus: The ſervant in the night opened the ſtreet door, and let in the thief, and ſhewed him the ſide board, from whence he took the plate; then the ſervant opened the door, and let him out, but did not go out with him, but went to bed. Upon the trial it was doubted, whether this was burglary in the ſervant, he not going out with the other; wherefore it was ordered to be found ſpecially. And afterwards at a meeting of all the judges at *Serjeants-Inn*, they were all of opinion that it was burglary in both. And upon report of this opinion the next ſeſſions, the defendant was executed. *Str.* 881.

XIII. Diſputes between ſilkmaſters and their workmen.

1. By the 13 & 14 *C.* 2. *c.* 15. Every ſilk winder and doubler, who ſhall unjuſtly, or deceitfully and falſly purloin, imbezil, pawn, ſell, or detain any part of ſilk delivered to them to wind or double, in every ſuch caſe, as well the winder or journeyman ſo offending, as the buyer and receiver thereof, being lawfully convicted, by confeſſion, or oath of one witneſs, before one juſtice (or mayor,) ſhall render to the party grieved ſuch ſatisfaction for his damage and loſs and charges, as the juſtice ſhall order. *ſ.* 6.

But

But no more damages ſhall be given, than the party grieved ſhall prove he is damnified, and hath expended; and if the party ſhall not be able, or do not make recompence in 14 days after conviction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence was committed, or in ſome market town near, in the ſaid county; and for the ſecond offence, to incur the like, or ſuch further puniſhment by whipping or being put in the ſtocks, as ſuch juſtice ſhall think convenient. *ſ.* 7.

2. And by the 20 *C.* 2. *c.* 6. If any ſilk winder or doubler ſhall be found faulty, in unjuſtly, deceitfully, or falſly purloining, imbezilling, pawning, ſelling, or detaining any ſilk committed to his truſt; any juſtice, or mayor, ſhall immediately on conviction by confeſſion, or oath of one witneſs, commit him to priſon or houſe of correction, till ſatisfaction be given to the party wronged, or puniſhment inflicted as by the 13 & 14 *C.* 2. is appointed.

3. And by the 8 & 9 *W.* *c.* 36. Every perſon that ſhall embezil, pawn, ſell, or detain any ſilk delivered to him to be wrought, or after it is wrought up, and alſo the receiver and buyer thereof, or ſuch as take the ſame to pawn, ſhall be ſubject to all the penalties of the 13 & 14 *C.* 2. *c.* 15. and the 20 *C.* 2. *c.* 6.

XIV. Diſputes between clothiers and their workmen, by divers ſtatutes.

1. By the 4 *Ed.* 4. *c.* 1. Clothmakers ſhall pay to the carders, and ſpinſters, and other labourers, their wages in money and not in goods, and deliver wool to them to be wrought according to the due weight thereof; on pain of forfeiting treble value of the wages, and for every delivery of exceſſive weight 6*d.* *ſ.* 5.

And every carder, ſpinſter, weaver, fuller, ſhearman, and dyer ſhall duly perform his duty in his occupation, on pain of double damages to the party grieved. *ſ.* 6.

And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſteward of leet, may hear and determine the ſame, and commit the offender to the next gaol, till the ſaid duties, forfeitures, and damages be paid. And any perſon not grieved may inform; in which caſe, the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amerciaments, 3*s.* 4*d.* And they may grant like proceſs, as juſtices of the peace may do for ſurety of the peace, without any fee to

be taken for the execution of their offices in this behalf. *ſ.* 6.

2. By the 7 *J.* *c.* 7. Every ſorter, carder, kember, ſpinſter, and weaver, who ſhall unjuſtly, falſly, or deceitfully convey, imbezil, purloin, ſell, or detain any part of the wool or yarn delivered by any clothier, maker of bays, ſays, or by any other perſon making ſuch cloths or ſtuffs, and alſo the buyer and receiver thereof, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before two juſtices, or before the mayor and one of the aldermen or moſt ſubſtantial perſons of a town corporate, ſhall make ſuch ſatisfaction for damages, as the ſaid juſtices or chief officers ſhall appoint; and if the offender ſhall not by them be thought ſufficient, or do not make ſuch ſatisfaction, he ſhall for the firſt offence be apprehended and whipped, or ſet in the ſtocks where the offence is committed, or in ſome market town near in the ſame county; and for the ſecond offence, ſhall incur the like or ſuch further puniſhment by whipping, or being put in the ſtocks, as the ſaid juſtices or chief officers ſhall think convenient. *ſ.* 2.

And every ſpinner that ſhall receive any wool to be ſpun into yarn, for any clothier dwelling in *Cogſhall*, *Bocking*, *Braintree*, *Halſteed*, *Wittam*, or *Colcheſter*, and ſhall deliver back the yarn by any reel ſhorter than two yards about, ſhall be ſubject to the like puniſhment. *ſ.* 4.

3. By the 10 *An.* *c.* 16. Every clothier, clothworker, cardmaker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 20 *s.* on conviction in 30 days, before one juſtice, on oath of one witneſs, half to the informer, and half to the poor: If he ſhall not pay in 14 days after conviction, the ſame to be levied by the conſtable by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the gaol or houſe of correction, to be kept to hard labour not exceeding 3 months. *ſ.* 6, 7, 8.

Perſons aggrieved on this act may appeal to the next ſeſſions, who may allow coſts. *ſ.* 9.

4. By the 1 *G.* *ſt.* 2. *c.* 15. Every clothier, clothworker, card maker, or other perſon concerned in the trade of the woollen manufacture, ſhall pay his workmen in money, and not in goods; on pain of 40 *s.* on conviction (in 40 days) before one juſtice, on oath of one witneſs; to be diſpoſed, if in *London*, to the benefit of *Chriſt's hoſpital*, elſewhere to the poor where the offence ſhall be diſcovered;

and

and if he ſhall not pay in 30 days, to be levied by the conſtable, by warrant of ſuch juſtice, by diſtreſs; and where no ſufficient diſtreſs can be found, to be committed to the common gaol or houſe of correction, to be kept to hard labour for 3 kalendar months. *ſ.* 7, 8, 12.

5. By the 12 *G. c.* 34. If any perſon ſhall, by day or night, break or enter by force into any houſe or ſhop, with intent to cut or deſtroy any ſerge or other woollen goods in the loom, or any tools employed in the making thereof, or ſhall wilfully and maliciouſly cut or deſtroy any ſuch ſerges or woollen goods in the loom, or on the rack, or ſhall burn, cut, or deſtroy any rack on which any ſuch ſerges or woollen goods are hanged in order to dry, or ſhall wilfully and maliciouſly break or deſtroy any tools uſed in the making ſuch goods; he ſhall be guilty of felony without benefit of clergy. *ſ.* 7.

6. By the 13 *G. c.* 23. Whereas diſputes have ariſen, between the clothiers and makers of woollen cloth, and the manufacturers employed by them, concerning the length of the warping bars, and uncertainty of weights, by which wool, yarn, and other materials uſed in the manufacturing of woollen goods have been delivered out to the workmen, for quieting the ſame it is enacted, that it ſhall not be lawful for any maker of mixed, medley, or white cloth, to uſe any bars called warping bars, but only ſuch which ſhall be of the meaſure and length hereafter appointed; that is to ſay, every long warping bar ſhall be in length three yards and three inches, and no more; and every round warping bar ſhall be four yards and four inches round, and no more; the ſaid three inches on the long bar, and the ſaid four inches on the round bar, being in lieu of the over meaſure uſually allowed in cloths; and alſo that the thrums at the ends of the warping bars ſhall not exceed 18 inches in length; and if any maker of ſuch cloth ſhall uſe any warping bar of other length or meaſure, or with thrums exceeding 18 inches in length, he ſhall forfeit 10 *l.* *ſ.* 1.

Every maker of ſuch cloth, or goods mixed with wool, ſhall give out all wool, yarn, or other materials, by weight at 16 ounces to the pound; and ſhall receive back the ſame by the ſame weight, on pain of 5 *l.* *ſ.* 2.

Offences againſt this act ſhall be determined by two juſtices, on information on oath, within 3 kalendar months; who ſhall levy the penalties by diſtreſs, half to the informer, and half to the poor; for want of ſufficient diſtreſs, to be committed to gaol not exceeding 3 months, or until ſatisfaction be made. *ſ.* 4.

And all diſputes and demands, relating to work, wages, or damages, between any clothier or maker of woollen goods, or goods mixed with wool, and any weaver or other perſon employed in ſuch manufactures, ſhall be determined by two juſtices, who ſhall on complaint ſummon the parties, and hear and examine on oath, and adjudge ſuch ſatisfaction, and give ſuch coſts and damages to the party grieved, as they ſhall judge reaſonable, and iſſue their warrant to levy ſuch coſts and damages (if not paid in ten days) by diſtreſs, and for want of ſufficient diſtreſs, ſhall commit the party to the county gaol or houſe of correction, not exceeding 3 months, or till ſatisfaction be made. *ſ.* 5.

Perſons aggrieved by order of ſuch juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award ſuch coſts and damages as they ſhall judge reaſonable, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, may commit the party to the county gaol or houſe of correction, not exceeding three kalendar months, or till ſatisfaction be made: and no proceedings herein ſhall be removed by certiorari or other proceſs. *ſ.* 6.

And one juſtice, on information on oath, that any perſon is, or is ſuſpected to be, guilty of any the ill practices aforeſaid, may iſſue his warrant to the conſtable or other peace officer, or to any churchwarden or overſeer, directing him in the day time to enter into any houſe, ſhop, warehouſe, or other ſuſpected place, to ſearch for and examine all ſuch bars and weights as ſhall be made uſe of for the purpoſes before mentioned, by any ſuch clothier or maker of woollen goods; and if ſuch perſon ſhall interrupt the officer, he ſhall forfeit 5 *l.* *ſ.* 7.

And every maker of mixed, medley, or white broad cloth, ſhall pay the weaver according to the number of yards, that the chains are laid on the warping bars, and not otherwiſe, on pain of 5 *l.* *ſ.* 9.

7. By the 29 *G.* 2. *c.* 33. if any clothier, ſerge-maker, woollen or worſted ſtuff-maker, worſted or woollen yarn ſtocking-maker, or perſon concerned in making any woollen clothes, ſerges, ſtuffs, worſted or woollen yarn ſtockings, or any other perſon any way concerned for himſelf or another, in employing weavers, combers of jerſey, or wool worſted combers, ſpinners, knitters, or other labourers, in the woollen manufactures, ſhall pay any perſon his wages in goods, or by way of truck, bill, or note, or in any other manner than in money; he ſhall (on proſecution in 3 months) forfeit 20 *l.* to be recovered by

action

action of debt, by any perſon who ſhall ſue for the ſame. ——Or otherwiſe, before two juſtices, by confeſſion, or oath of one witneſs, by diſtreſs (if not paid in 14 days); and to be diſtributed, half to the informer, and half to the poor: And for want of ſufficient diſtreſs, to be committed to the houſe of correction for any time not exceeding 3 months, or until ſatisfaction ſhall be made. Perſons aggrieved by the order of the juſtices may appeal to the next ſeſſions, firſt entring into recognizance with ſufficient ſecurity before the juſtices to proſecute and abide by the order that ſhall be made on ſuch appeal, and giving 8 days notice in writing to the party in whoſe favour the order was made. And the ſeſſions may award coſts and damages, and by their order or warrant may levy ſuch coſts and damages by diſtreſs; and for want of ſufficient diſtreſs, may commit the party to the common gaol, for any time not exceeding 3 months, or until ſatisfaction ſhall be made. And the order of ſeſſions ſhall be final: And no proceedings of the juſtices out of, or in the ſeſſions, ſhall be removed by certiorari, or otherwiſe.

8. And by the 30 *G.* 2. *c.* 12. If any clothier or maker of any mixed, medley, or white broad cloth, ſhall refuſe or neglect to pay to the weaver employed by him his wages or price agreed on in money, within two days next after the work ſhall be performed and delivered to ſuch employer or ſome perſon on his behalf (the ſame being demanded of ſuch employer or perſon employed on his behalf); every ſuch clothier or perſon ſo offending ſhall forfeit 40*s.* to be recovered and diſpoſed of as by the ſaid act of the 29 *G.* 2. *c.* 33.

XV. Diſputes between maſters and ſervants in the woollen, linen, fuſtian, cotton, and iron manufactures; by the 1 An. ſt. 2. c. 18. & 13 G. 2. c. 8.

1. By the 1 *An. ſt.* 2. *c.* 18. If any perſon employed in the woollen, linen, fuſtian, cotton, or iron manufactures ſhall imbezil or purloin any wefts, thrums, or ends of yarn, or any other materials of wool, hemp, flax, cotton, or iron, or ſhall reel ſhort or falſe yarn, and ſhall be convicted by oath of one witneſs, or confeſſion, before one juſtice, he ſhall forfeit double the value of the damages: And if he ſhall neglect or refuſe to pay the ſame, the juſtice ſhall commit him to the houſe of correction until ſatisfaction ſhall be made: And if it ſhall appear to the juſtice,

ſtice, that he is not able to make ſatisfaction, he ſhall be there publickly whipped, and kept to hard labour not exceeding 14 days. *ſ.* 1.

And every perſon buying or receiving any wefts, thrums, or ends of yarn, or other materials of wool, hemp, flax, cotton, or iron, ſhall ſuffer in like manner. *ſ.* 2.

And all payments to the ſaid workmen, ſhall be in money, and not in cloth, victuals, or commodities; and all wool delivered out to be wrought up, ſhall be delivered with declaration of the true weight thereof; on pain that every offender in either of the ſaid caſes, ſhall forfeit double the value of what ſhall be due for ſuch work; and if any ſuch workman ſhall be guilty of any ſuch fraud or default, in the work by him done, he ſhall anſwer double damages. *ſ.* 3.

And all wages, demands, frauds, and defaults of labourers, in the ſaid manufactures, concerning work done, ſhall be determined by two juſtices, who may ſummon and examine witneſſes on oath: Perſons aggrieved may appeal to the ſeſſions to be holden next after notice of the order of the ſaid two juſtices; and if the ſeſſions give judgment againſt the appellant, they ſhall order him to pay ſuch coſts as to them ſhall ſeem meet. *ſ.* 4.

2. And by the 13 *G.* 2. *c.* 8. If any perſon employed in the working up of any woollen, linen, fuſtian, cotton, or iron manufactures, ſhall purloin, embezil, ſecret, ſell, pawn, exchange, or otherwiſe illegally diſpoſe of any of the materials, whether the ſame or any part thereof be or be not firſt wrought up, or ſhall reel ſhort or falſe yarn, and ſhall be convicted thereof as by the 1 *An. ſt.* 2. *c.* 18. he ſhall forfeit double value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, the ſaid juſtice ſhall cauſe him to be committed to the houſe of correction, to be whipped and kept to hard labour, not exceeding 14 days; and for a ſecond, or other ſubſequent offence, for ſuch imbezilling or purloining, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, then ſuch or any other juſtice ſhall cauſe him to be committed to the houſe of correction to be kept to hard labour for any time not exceeding three months, nor leſs than one month, and alſo during the time of ſuch commitment ſhall cauſe him to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftner as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 1.

And the receivers of the ſame ſhall be ſubject to the like penalties. *ſ.* 2.

And the forfeitures by both theſe acts ſhall be half to the party injured, and half to the poor; with the like liberty of appealing on this act, as on the 1 *An. id. ſ.* 3.

XVI. Diſputes between maſters and their workmen, in the leathern manufactures; by the 13 G. 2. c. 8.

If any perſon employed in cutting, paring, waſhing, dreſſing, ſewing, making up, or otherwiſe manufacturing of gloves, breeches, leather, ſkins, boots, ſhoes, ſlippers, wares, or other goods or materials to be made uſe of in any the ſaid employments, or in any branch or particular thereof, ſhall fraudulently purloin, embezil, ſecret, ſell, pawn, or exchange all or any part of the gloves, breeches, leather, ſkins, parings or ſhreds of gloves, or leather, boots, ſhoes, ſlippers, or other the ſaid wares, either before or after they ſhall be made into wares, and be thereof convicted by the oath of the maſter or owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed or the offender ſhall reſide; ſuch juſtice may award him to make ſatisfaction to the party injured, not exceeding double value of the goods ſo purloined or diſpoſed of, half to the party grieved, and half to the poor, together with full charges attending the conviction; to be levied by diſtreſs and ſale; and if he ſhall not have goods ſufficient, and ſhall not pay immediately, ſuch juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, and whipped in ſuch manner as the juſtice ſhall direct; and for a ſecond, or other ſubſequent offence, he ſhall forfeit four times the value of the damages, together with ſuch coſts as the juſtice ſhall judge reaſonable; and if not paid immediately, to be committed to the houſe of correction or other publick priſon, to be there kept to hard labour not exceeding three months, nor leſs than one month, and alſo during ſuch commitment to be publickly whipped in the market town where he ſhall be committed, at the market place or croſs, once or oftner as to ſuch juſtice ſhall ſeem reaſonable. *ſ.* 4.

And every perſon who ſhall knowingly or willingly receive any the ſaid goods or materials, either from the perſon offending, or from any other perſon (except the owner) or offer ſo to do; he ſhall, on like conviction, make

ſuch

ſuch recompence in two days, or elſe be ſubject to ſuch diſtreſs, and for want of ſufficient diſtreſs be liable to the like puniſhment, as the perſons ſo purloining or otherwiſe diſpoſing thereof as above; and ſo in like manner for the ſecond and every ſubſequent offence. *ſ.* 5.

And all payments to workmen employed in the ſaid manufactures, ſhall be in money, and not in goods, except by their own requeſt and conſent; and all materials delivered out to be wrought in ſuch manufactures, ſhall be delivered with a declaration of the true weight, quantity, or tale thereof; on pain of forfeiting to ſuch manufacturer double value of what ſhall be due for his work; and if ſuch labourer or manufacturer ſhall be guilty of any fraud, abuſe, neglect, or default in the work by him undertaken to be done, he ſhall anſwer to the owner double damages. *ſ.* 6.

And all wages, demands, frauds, abuſes, neglects, and defaults of labourers and manufacturers in the ſaid trades, concerning any work done in ſuch manufacture, ſhall be determined by two juſtices, who may ſummon and examine witneſſes upon oath. *ſ.* 7.

Moreover, every perſon retained or employed in making up any the ſaid manufactures, for any one maſter, and neglecting the performance thereof, either by procuring or permitting himſelf to be ſubſequently employed by any other maſter, before he hath compleated the work, ſhall on conviction by oath of one witneſs before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 8.

Perſons aggrieved by any order of the ſaid two juſtices, may appeal to the next ſeſſions, giving 8 days notice; and the ſeſſions may award coſts to either party. But no order of ſuch two juſtices ſhall be appealed againſt, or quaſhed, for want of form only. *ſ.* 9.

XVII. Diſputes between maſters and their workmen, in the making of hats, or in the woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilken manufactures; by the 22 G. 2. c. 27.

If any perſon hired or employed to make up any felt or hat, or to prepare or work up any woollen, linen, fuſtian, cotton, iron, leather, furr, hemp, flax, mohair, or ſilk manufactures, or any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or of any the ſaid materials

materials mixed one with another, ſhall purloin, embezil, or otherwiſe unlawfully diſpoſe of any of the materials with which he ſhall be intruſted, whether the ſame be or be not firſt wrought up, or ſhall reel ſhort or falſe yarn, and be convicted thereof by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the party ſhall reſide, he ſhall be committed to the houſe of correction, or other publick priſon, to be kept to hard labour for 14 days, and to be once publickly whipped, at the market place, or other publick place where he ſhall be committed; and for a ſecond or other ſubſequent offence, he ſhall be committed in like manner, for any time not exceeding three months, nor leſs than one month, to be kept to hard labour, and alſo to be publickly whipped twice or oftner. *ſ.* 1.

And if any perſon ſhall be convicted as aforeſaid, of buying, receiving, or taking by way of gift, pledge, ſale, or exchange, or in any other manner, from any perſon whom he knows to be employed to make or prepare any the ſaid manufactures, any thrums or ends of yarns, or any other materials of wool, furr, hemp, flax, cotton, iron, or any leather, mohair, or ſilk, whether the ſame be or be not firſt wrought up, the conſent of the employer not being firſt had; or of buying or receiving in any manner whatſoever, from any other perſon, any of the ſaid materials, whether the ſame be or be not firſt wrought up, knowing them to be purloined or embezilled, he ſhall, for the firſt offence, forfeit 20*l.* and if not paid immediately, the juſtice ſhall commit him to the houſe of correction or other publick priſon, to be kept to hard labour for 14 days, unleſs the forfeiture be ſooner paid; and if it be not paid in two days before the expiration of the term, he ſhall be publickly whipped at the market place, or other publick place of the town, once or oftner, as the juſtices ſhall order; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40*l.* and if not paid immediately, he ſhall be committed in like manner, to be kept to hard labour not exceeding three months, nor leſs than one month, unleſs the forfeiture be ſooner paid; and if it be not paid in ſeven days before expiration of the term, he ſhall be publickly whipped twice or oftner, as the juſtice ſhall order: And the ſaid forfeitures, after ſatisfaction made thereout to the party injured, with ſuch coſts as ſhall be adjudged by the juſtice, ſhall be equally diſtributed among the poor of the pariſh where the offender ſhall reſide. *ſ.* 2.

(Which

(Which conviction ſhall be in the form and words following;

Middleſex, to wit. BE *it remembred, that on the* —— *day of* —— *in the* —— *year of his majeſty's reign*, A. B. *was convicted before me* [or *us*] —— *of his majeſty's juſtices of the peace for the ſaid county of* —— [or, *for the riding or diviſion of the ſaid county of* —— or, *for the city, liberty, or town of* —— *in the ſaid county of* ——as the caſe ſhall be] *of buying, receiving, or taking to pawn* (as the caſe ſhall be) ——ſpecifying the materials or wares ſo bought, received, or taken to pawn) *the property of* C. D. *of* ——*in the county of* —— *and by him* (or *her*) *delivered to* —— *to be manufactured. Given under my hand and ſeal* [or, *our hands and ſeals*] *the day and year aforeſaid.*

Which ſhall not be removed by certiorari: And the juſtices ſhall cauſe the ſame to be written on parchment and tranſmitted to the next ſeſſions, to be filed amongſt the records. 23 *G.* 2. *c.* 13. *ſ.* 9.)

Perſons convicted of buying or receiving any the ſaid materials, may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon entring into a recognizance before the juſtice, at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal, and to be forthcoming to abide the determination of the juſtices in the ſaid ſeſſions; and the ſeſſions may award coſts to either party; and if the judgment be affirmed, the appellant ſhall immediately pay the ſum adjudged, with coſts; or in default thereof, ſhall ſuffer the penalties before directed. *ſ.* 3.

And if any perſon ſhall be convicted of purloining or embezilling any the ſaid materials, or of buying or receiving the ſame in manner before deſcribed, the juſtice before whom the conviction ſhall be, may iſſue his warrant to any perſon, impowering him in the preſence of a conſtable, to enter into and ſearch in the day time, the houſes and other places belonging to ſuch perſon, and to bring ſuch materials as ſhall be found, before the ſaid juſtice, to be kept in cuſtody by him; and if in 24 days it ſhall be made appear to the juſtice, that the perſon from whoſe houſe the ſaid materials ſhall be ſo taken, is the lawful owner, they ſhall be reſtored to him; otherwiſe they ſhall be deemed to be purloined or embezilled, and ſhall be publickly ſold, and the money ariſing thereby (charges of ſale being firſt deducted)

deducted) ſhall be equally diſtributed amongſt the poor of the pariſh where the perſon convicted ſhall reſide. *ſ.* 4.

And the ſaid juſtice ſhall, within three days after ſuch materials ſhall be brought to him, give notice thereof in writing under his hand and ſeal, to the perſon convicted, appointing a time and place for his attending to prove his property therein; which ſhall be within 21 days, and not leſs than 18 days after ſuch notice; and if ſuch perſon be in any houſe of correction or other priſon, the juſtice ſhall cauſe a copy of the ſaid notice, atteſted under his hand and ſeal, to be delivered to the keeper; who ſhall bring the ſaid perſon at the time and place ſpecified, on pain of forfeiting to the priſoner the full value of the ſaid materials, by diſtreſs and ſale, by warrant of the ſaid juſtice, if not paid immediately. *ſ.* 5.

If any perſon ſhall be aggrieved by the judgment of the juſtice, relating to the ſale of the materials, he may appeal to the next ſeſſions, and in the mean time the ſale ſhall be poſtponed; a written notice under the hand of the appellant, ſignifying his intention to appeal, being given to the juſtice, before the time appointed for the ſale; and if the appellant ſhall not proſecute the appeal, or the judgment ſhall be affirmed, the ſeſſions may award coſts to the defendant. *ſ.* 6.

And if any perſon ſhall not make uſe of the whole of the materials, and ſhall not return the remainder in 21 days (if required by the owner) this ſhall be deemed embezilling and purloining. *ſ.* 7.

And upon complaint on oath of any offence againſt this act to any one juſtice, he ſhall iſſue his warrant for bringing the offender before him, or any other juſtice, who ſhall hear and determine the ſame. *ſ.* 8.

And if any perſon ſhall be employed to work up any of the ſaid manufactures for any one maſter, and ſhall neglect or refuſe the performance thereof, by permitting himſelf to be ſubſequently retained by any other perſon, before he ſhall have compleated the ſame; he ſhall, on conviction on the oath of one witneſs, before one juſtice, be ſent to the houſe of correction, to be kept to hard labour not exceeding one month. *ſ.* 9.

But this ſtatute ſhall not repeal the 13 & 14 *C.* 2. nor the 20 *C.* 2. nor the 8 & 9 *W.* beforementioned. *ſ.* 10.

Moreover, all contracts or agreements, and all by-laws, rules, and orders, made in any unlawful clubs and ſocieties, by any perſons employed in any woollen manufacture, or in the making of felts or hats, or in any manufacture of ſilk, mohair, furr, hemp, flax, linen, cotton, fuſtian, iron,

iron, or leather, or in any manufactures made up of wool, furr, hemp, flax, cotton, mohair, or ſilk, or any of the ſaid materials mixed one with another, for regulating any of the ſaid trades, or for ſettling the prices of goods, or for advancing their wages, or for leſſening their uſual hours of work, ſhall be void: And if any ſuch perſon ſhall be concerned in any ſuch combination, he ſhall on conviction in three kalendar months, on the oath of one witneſs before two juſtices, be committed to the houſe of correction, to be kept to hard labour, not exceeding three months, or to the common gaol not exceeding three months. *ſ.* 12.

And if any ſuch perſon ſhall depart from his ſervice before the end of the term, or ſhall quit or return his work before it be finiſhed, unleſs for ſome reaſonable cauſe to be allowed by two juſtices; he ſhall on the like conviction before two juſtices, be committed to the houſe of correction, to be kept to hard labour not exceeding three months. *id.*

And if any ſuch perſon ſhall wilfully damnify, ſpoil, or deſtroy, without conſent of the owner, any work committed to his charge, he ſhall, on conviction as aforeſaid, forfeit to the owner double value, by diſtreſs, by warrant of two juſtices; and for want of ſufficient diſtreſs, to be committed to the houſe of correction, to be kept to hard labour, for any time not exceeding three months, or till ſatisfaction be made. *id.*

And every ſuch maſter ſhall pay his workmen in money, and not otherwiſe, and ſhall not make any deduction on account of any goods ſold or delivered previous to the agreement: And for the more eaſy recovering the ſaid wages, two juſtices upon complaint (in three months, 13 *G. c.* 23.) ſhall ſummon the party offending, and for non-payment ſhall iſſue their warrant to levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall commit the offender to gaol for ſix months, or until he ſhall pay, or give full ſatisfaction for the ſame, to the good liking of the party grieved. *id.*

And every perſon paying the ſame otherwiſe than in money, ſhall forfeit 10 *l.* half to the informer, and half to the party grieved, by diſtreſs as aforeſaid. *id.*

Perſons aggrieved by order of the two juſtices may appeal to the next ſeſſions, giving reaſonable notice; the reaſonableneſs of which notice ſhall be determined by the juſtices at the ſaid ſeſſions; and if reaſonable time of notice was not given, they ſhall adjourn the appeal to the next ſeſſions after; and the ſeſſions may award coſts to either party. *id.*

Moreover, if any perſon ſhall aſſault or abuſe any maſter or other perſon concerned in any of the ſaid manufactures, whereby he ſhall receive any bodily hurt, for not complying with any ſuch illegal by-laws, rules, or orders; or ſhall write or cauſe to be written, or knowingly ſend or cauſe to be ſent any letter, writing, or meſſage, threatning any harm to any ſuch perſon, or threatning to burn, pull down, or deſtroy any of his houſes, or cut down any of his trees, or to maim or kill any of his cattle, for not complying with any demands of his workmen, or for not conforming to any ſuch illegal by-laws, rules, or orders; he ſhall on conviction by indictment, in 12 kalendar months, be guilty of felony, and tranſported for ſeven years. *id.*

XVIII. Diſputes between maſters and their workmen in the manufacture of clocks and watches; by the 27 G. 2. c. 7.

If any perſon employed by any one practiſing the trade of clockmaking, or watchmaking, or any part or branch thereof, to make, finiſh, alter, repair, or clean any clock, watch, or part thereof; or intruſted by any perſon practiſing the ſaid trade or trades, with any gold, ſilver, or other metal or material, to be, or that ſhall be, in the whole or in part, wrought or manufactured for any part of a clock or watch, or any diamond or other precious ſtone, to be, or that ſhall be, ſet or fixed in or about any clock or watch; ſhall purloin, imbezil, ſecrete, ſell, pawn, exchange, or otherwiſe unlawfully diſpoſe of any clock, watch, gold, ſilver, or other metal or material, or any part thereof, or any diamond or other precious ſtone, with which he ſhall be ſo intruſted; and ſhall be thereof convicted by the oath of the owner, or other credible witneſs, or confeſſion, before one juſtice where the offence ſhall be committed, or the perſon ſo charged ſhall reſide: he ſhall for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him to the houſe of correction or other publick priſon, there to be kept to hard labour for the ſpace of 14 days, unleſs the forfeiture ſhall be ſooner paid; and if within two days before the expiration of the ſaid 14 days ſuch forfeiture ſhall not be paid, the juſtice may order him to be publickly whipped at the market place, or ſome other publick place, of the city, town, or place, where he ſhall be committed; and for a ſecond, or other ſubſequent offence, he ſhall forfeit 40 *l.* in like manner, and if not paid forthwith, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour for any time not ex-

ceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice may order him to be whipped in like manner twice or oftner, as to ſuch juſtice ſhall appear reaſonable.

And if any perſon ſhall buy, receive, accept, or take by way of gift, pawn, pledge, ſale, or exchange, or in any other manner, of or from any perſon whomſoever, any clock or watch, or part thereof, or any gold, ſilver, or other metal or material as aforeſaid, whether the ſame, or any part thereof, be or be not wrought or manufactured, or any ſuch diamond or other precious ſtone, knowing the ſame to be ſo purloined or imbezilled; he ſhall, on the like conviction, for the firſt offence forfeit 20 *l.* and if not forthwith paid, the juſtice ſhall commit him in like manner, to be kept to hard labour for 14 days, unleſs the forfeiture ſhall be ſooner paid, and if within two days before the expiration of the ſaid 14 days, the ſaid forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, once or oftner, as to ſuch juſtice ſhall appear reaſonable; and for a ſecond or other ſubſequent offence, he ſhall forfeit 40 *l.* and if not forthwith paid, the juſtice ſhall commit him as aforeſaid, to be kept to hard labour, for any time not exceeding three months, nor leſs than one month, unleſs the forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which he ſhall be committed, the forfeiture ſhall not be paid, the juſtice ſhall order him to be publickly whipped as aforeſaid, twice or oftner, as to him ſhall appear reaſonable.

And one juſtice, on complaint to him made upon oath, of any offence againſt this act, may iſſue his warrant for apprehending and bringing before him, or before any other juſtice of the ſame place, the perſon ſo charged.

And the conviction ſhall be in this form,

Middleſex to wit. BE *it remembred that on the——day of——in the——year of his majeſty's reign*, A. B. *was convicted before me* (or *us*)——*of his majeſty's juſtices of the peace for the ſaid county of——or for the——riding* (or *diviſion*) *of the ſaid county of——or for the city, liberty, or town of——in the ſaid county of——* (as the caſe ſhall be) *of purloining, embezilling, ſecreting, ſelling, pawning, exchanging, or unlawfully diſpoſing of, or of buying, receiving, or taking to pawn* (as the caſe ſhall happen to

to be)——(ſpecifying the reſpective goods, materials or effects) *the property of* C. D. *of*——*in the county of*——. *Given under my hand and ſeal* (or *our hands and ſeals) the day and year aforeſaid.*

If any perſon ſhall think himſelf aggrieved by the judgment of the juſtice, he may appeal to the next ſeſſions; in which caſe the execution of the judgment ſhall be ſuſpended, the perſon ſo convicted entring into a recognizance at the time of the conviction, with two ſureties, in double the ſum adjudged, to proſecute the appeal with effect, and to be forthcoming to abide the judgment and determination of the juſtices in ſuch ſeſſions; and the juſtices there ſhall hear and determine the ſame, and award ſuch coſts to either party, as to them ſhall appear juſt and reaſonable; and if the judgment ſhall be affirmed, the appellant ſhall immediately pay the ſum adjudged, together with ſuch coſts as ſhall by the court be awarded; or in default thereof, ſhall ſuffer the penalties as for purloining, embezilling, or receiving as aforeſaid.

The ſaid forfeitures, after ſatisfaction made thereout to the party injured, together with ſuch coſts of proſecution as the juſtice ſhall judge reaſonable, ſhall go to the uſe of the poor where the offender ſhall reſide.

And the juſtice ſhall cauſe the conviction to be fairly written upon parchment, and tranſmitted to the next ſeſſions, there to be filed and kept amongſt the records.

And the ſame ſhall not be removed by certiorari.

XIX. Diſputes between maſters and ſervants in huſbandry, artificers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, and other labourers, by the 20 G. 2. c. 19.

By conſtruction of law upon the ſtatute of the 5 *El.* the juſtices had a power of compelling the payment of the wages which they had rated and aſſeſſed; but the ſaid ſtatute being deficient in two material points, to wit, in extending only to ſuch wages as ſhould be rated, and to ſervants in huſbandry only; and moreover, there being therein (as hath been obſerved) no power to admit the ſervant's oath as evidence; therefore by the 20 *G.* 2. *c.* 19. it is enacted as follows:

All complaints, differences, and diſputes between maſters or miſtreſſes and ſervants in huſbandry hired for a year or longer, or between maſters and miſtreſſes and artificers, handicraftmen, miners, colliers, keelmen, pitmen, glaſſ-

men, potters, and other labourers employed for any certain time or in any other manner, ſhall be determined (A) by one juſtice, where the maſter or miſtreſs ſhall inhabit, altho' no rate or aſſeſſment of wages has been made that year; which juſtice ſhall examine on oath any ſuch ſervant or other the ſaid perſons, or any other witneſſes touching ſuch complaint, and make ſuch order (B) for payment of wages, as to him ſhall ſeem juſt and reaſonable, provided that the ſum in queſtion do not exceed 10 *l.* with regard to any ſervant, nor 5 *l.* with regard to any other perſons before mentioned; and in caſe of non-payment for 21 days, ſuch juſtice may iſſue his warrant to levy the ſame by diſtreſs (C). *ſ.* 1.

And by the ſaid ſtatute, ſuch juſtice on application or complaint on oath by any maſter, miſtreſs, or employer, againſt any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or labourer, concerning any miſdemeanor, miſcarriage, or ill behaviour in ſuch his ſervice or employment, may hear and determine the ſame (D), and puniſh the offender by commitment (E) to the houſe of correction, there to remain and be corrected, and held to hard labour not exceeding one kalendar month, or otherwiſe by abating ſome part of his wages (F), or by diſcharging (G) ſuch ſervant or other the ſaid perſons from their ſervice or employment. *ſ.* 1.

And in like manner, ſuch juſtice on complaint or application on oath by any ſuch ſervant, artificer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, or other labourer, againſt ſuch maſter, miſtreſs, or employer, concerning any miſuſage, refuſal of neceſſary proviſion, cruelty, or other ill treatment, may ſummon (H) ſuch maſter, miſtreſs, or employer, to appear before him at a reaſonable time to be prefixed in ſuch ſummons; and he ſhall examine into the matter of ſuch complaint, whether ſuch maſter, miſtreſs, or employer ſhall appear or not, proof being made upon oath of their being duly ſummoned; and upon proof thereof made upon oath, to his ſatisfaction, may diſcharge (I) ſuch ſervant, or other perſon aforeſaid, from his ſervice and employment, which diſcharge ſhall be given under his hand and ſeal *gratis*. *ſ.* 2.

If any perſon ſhall think himſelf aggrieved by ſuch determination, order, or warrant of ſuch juſtice (except any order of commitment) he may appeal to the next ſeſſions, who may award coſts to either party, not exceeding 40 *s.* to be levied by diſtreſs in manner before mentioned. *ſ.* 5.

And

And no certiorari ſhall iſſue to remove any proceedings hereupon. *ſ.* 6.

Note; The words in the aforegoing ſtatute [*and other labourers, employed for any certain time, or in any other manner*] are very general and comprehenſive, but yet perhaps ought not to be underſtood without ſome limitation: eſpecially it ſeemeth not neceſſary to extend them to any of the workmen in the woollen, linen, cotton, iron, leather, furr, hempen or other manufactures herein before ſpecified, becauſe the law hath provided other methods of proceeding therein, and particularly becauſe the ſtatute of the 22 *G.* 2. which is ſubſequent to this ſtatute, takes no notice of this ſtatute, but makes divers regulations in the aforeſaid inſtances, which if this ſtatute had been ſuppoſed to extend unto them, would have been ſuperfluous and impertinent. And with leſs reaſon may the word *labourers* ſeem to extend to footmen, coachmen, carriers, and ſuch like; but from the company with which it is ranked, to wit, miners, colliers, keelmen, and the like, it ſeems moſt properly to ſignify ſuch perſons, not being brought up to or employed in trades, as procure their ſuſtenance by bodily labour.

XX. Shipmaſters and their ſeamen.

By the 2 *G.* 2. *c.* 36. which by the 23 *G.* 2. *c.* 26. is continued to *March* 25, 1764, *&c.* it is enacted as follows:

It ſhall not be lawful for any maſter of a ſhip bound to parts beyond ſea, to carry any ſeaman or mariner, except his apprentices, to ſea, without firſt agreeing with them for their wages, which agreement ſhall be made in writing, declaring what wages each ſeaman is to have reſpectively, during the whole voyage, or for the time he ſhall ſhip himſelf for; and alſo to expreſs the voyage, for which the mariner was ſhipt, to perform the ſame, and to be ſigned by both parties; on pain that the maſter ſhall forfeit 5 *l.* for every ſuch ſeaman to *Greenwich* hoſpital, to be recovered on oath of one witneſs, before one juſtice, who ſhall iſſue his warrant to bring ſuch maſter before him; to be levied by diſtreſs; and if no diſtreſs can be found, to be committed to gaol till he ſhall pay the ſame.

Such mariner ſhall alſo ſign the agreement, in 3 days after he is entred on board.

And if any mariner ſhall deſert, or refuſe to proceed on the voyage, or ſhall deſert beyond the ſeas, after he ſhall have ſigned ſuch agreement, he ſhall forfeit to the owner of the ſhip the wages due to him.

And if any mariner ſhall deſert or abſent himſelf, after he hath ſigned ſuch contract; on application of the maſter, or owner of the ſhip, to one juſtice he ſhall iſſue his warrant to apprehend ſuch mariner: and if he ſhall refuſe to proceed on the voyage, and ſhall not give a ſufficient reaſon for ſuch refuſal, then to be committed to the houſe of correction, to be kept to hard labour, not exceeding 30 days, nor leſs than 14 days.

And if any mariner ſhall abſent himſelf from the ſhip, without leave of the maſter, or other officer having charge of ſuch ſhip, he ſhall for every day's abſence forfeit two days pay to *Greenwich* hoſpital.

And if any mariner, not entring into the king's ſervice, ſhall leave the ſhip before he ſhall have a diſcharge in writing by the maſter, he ſhall forfeit one month's pay, to be recovered and diſpoſed of as hereafter is mentioned.

And the maſters ſhall pay the mariners their wages, if demanded, in 30 days after the ſhip's being entred at the cuſtom houſe (unleſs there is a covenant to the contrary), or at the time they ſhall be diſcharged, which ſhall firſt happen, deducting the penalties of this act: on pain of paying to each mariner that ſhall be unpaid, 20 *s.* above his wages, to be recovered as the wages.

But no mariner by entring into, or ſigning ſuch agreement, ſhall be deprived of any means for recovery of wages, which he may now uſe: And the maſter ſhall be obliged to produce the contract, and not the mariner.

And the maſter ſhall deduct out of the wages all the penalties of this act, and enter the ſame in a book, and make oath, if required, to the truth thereof; which book ſhall be ſigned by the maſter, and two principal officers of the ſhip: which forfeitures (except forfeiture of wages to the owner on deſertion, or refuſing to proceed on the voyage) ſhall be applied to *Greenwich* hoſpital, to be paid to the officer in any port who collects the 6 *d.* a month deducted out of ſeamens wages, for the uſe of the hoſpital; which officer ſhall have power to adminiſter an oath to ſuch maſter, touching the truth of ſuch penalties.

The maſter deducting the ſaid penalties, and not paying them over in 3 months, ſhall forfeit treble to the ſaid hoſpital; to be recovered as any penalties, for not duly paying the 6 *d.* a month.

Nevertheleſs,

Nevertheleſs, this act ſhall not debar any ſeaman from entring into the king's ſervice, nor ſhall he forfeit his wages in that caſe, nor ſhall ſuch entry be deemed a deſertion.

XXI. Taylors and their workmen within the bills.

By the 7 *G. ſt.* 1. *c.* 13. All contracts by or between journeymen taylors within the bills, for advancing their wages, or leſſening their hours of work, ſhall be void; and perſons entring into ſuch agreement, ſhall on conviction in 3 months, on oath of one witneſs, before two juſtices, be committed to the gaol or houſe of correction for any time not exceeding two months.

And the ſeſſions from time to time, upon application to them made, ſhall appoint the wages and hours of work; which all taylors and their workmen ſhall obſerve, on pain of impriſonment by ſuch juſtices for any time not exceeding two months, on proſecution in 6 days.

And if any journeyman taylor ſhall depart from his ſervice before the end of his term, or before his work be finiſhed, or ſhall refuſe to enter into work, unleſs for cauſe to be allowed by two juſtices, he ſhall be ſent to the houſe of correction not exceeding two months.

Taylors allowing greater wages than ſo limited, ſhall forfeit 5 *l.* on conviction in 3 months, half to the informer, and half to the poor; and journeymen taking greater wages, ſhall be ſent to the houſe of correction not exceeding two months.

Perſons aggrieved by any order of two juſtices, may appeal to the next ſeſſions, giving 6 days notice; and the ſeſſions may award coſts to either party.

XXII. Shoemakers and their workmen within the bills.

By the 9 *G. c.* 27. If any journeyman ſhoemaker within the bills of mortality, ſhall be accuſed by his maſter of purloining any ſhoes or other wares or materials, one juſtice where the offence ſhall be committed, or the offender ſhall inhabit, on oath of ſuch offence, may ſummon the party, or iſſue his warrant to apprehend him; and if the ſame is proved before him by confeſſion, or oath of one witneſs, he ſhall award ſatisfaction for damages and charges, and levy the ſame by diſtreſs; and for want of ſufficient diſtreſs, ſhall cauſe the offender to be whipped where the offence was committed; and for a ſecond or other offence,

he ſhall commit him to the houſe of correction, not exceeding one month, nor leſs than 14 days.

And every perſon who ſhall buy, receive, or take in pawn the ſame, ſhall be ſubject to the ſame puniſhment.

And two juſtices, on complaint on oath, may iſſue their warrant for ſearching in the day time for goods ſo purloined, and break open doors, and every perſon hindring ſuch ſearch ſhall forfeit 10*l.* to him who ſhall ſue in two months; and if ſuch goods ſhall be found, they ſhall reſtore them to the owner, and cauſe the offender to make ſatisfaction for the damages and charges, as aforeſaid.

And every perſon retained by one maſter, who ſhall ſuffer himſelf to be retained by any other, before he hath finiſhed his work, ſhall, on conviction on oath of one witneſs, before one juſtice, be ſent to the houſe of correction not exceeding one month.

Perſons aggrieved may appeal to the next ſeſſions, giving 8 days notice.

XXIII. How far the maſter is anſwerable for the ſervant.

1. The maſter is indictable for a nuſance done by his ſervant; as for throwing dirt in the highways. L. *Raym.* 264.

But nevertheleſs it ſeemeth, that the ſervant alſo is indictable; for Mr. *Hawkins* ſays, that a ſervant is not excuſed the commiſſion of any crime, by the command or coertion of his maſter. 1 *Haw.* 3.

2. If goods are delivered to the ſervant of a carrier, and the goods are loſt, an action lies againſt the maſter. *Wood b.* 1. *c.* 6.

3. A ſervant with a cart, ran againſt another cart, wherein was a pipe of ſack, and overturned the cart and ſpoiled the ſack; an action lies againſt the maſter. 2 *Salk.* 441.

4. *M.* 10 *W. Jones* and *Hart.* A pawn broker's ſervant took a pawn; the pawner came and tendred the money to the ſervant; he ſaid he had loſt the goods; upon this the pawner brought an action againſt the maſter; and it was held well. 2 *Salk.* 441.

5. *H.* 8 *G. Mead* and *Hammond.* The plaintiff, according to the common courſe of dealing, delivered to the defendant's ſervant an ingot of gold to eſſay; and it not being returned, he brought an action againſt the maſter. And *Pratt* Ch. J. directed the jury, that the delivery to the

the ſervant was ſufficient to maintain the action againſt the maſter, on proving a ſubſequent demand and refuſal; ſo the plaintiff had a verdict. *Str.* 505.

6. *M.* 8 *G. Cary* and *Webſter*. The defendant was a clerk of the *South-ſea* company, and took in payments. The plaintiff paid him 600 *l.* and he paid it over to the company. And by *Pratt* Ch. J. No action in this caſe lies againſt the ſervant. If he had not paid it over, the plaintiff would have had his option, either to charge him or the company; as in the common caſe of payment to a goldſmith's ſervant, who doth not carry it to the account of his maſter, the party hath an election to go againſt either: he may charge the ſervant, becauſe till the money is paid over, the ſervant receives it to his uſe; or he may paſs by the ſervant, and make his demand upon the maſter, becauſe the payment to the ſervant is made in confidence of the credit given him by the maſter. *Str.* 480.

A. Summons of the maſter for wages, on complaint of the ſervant, on the 20 *G.* 2. *c.* 19.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

WHEREAS *information and complaint hath been made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *of* ——— *in the ſaid county, huſbandman, that he the ſaid* A. S. *was duly hired by* A. M. *of* ——— *in the ſaid county, huſbandman, to be a ſervant in huſbandry to and with him the ſaid* A. M. *for one whole year, to wit, from* Whitſuntide *in the year of our lord* ——— *to* Whitſuntide *now laſt paſt*, [or, *labourer*; or, *artificer*; or as the caſe ſhall be] *for the wages of* ———; *And accordingly that he the ſaid* A. S. *hath duly performed the ſaid ſervice; yet nevertheleſs that he the ſaid* A. M. *hath refuſed, and doth refuſe, to pay unto him the ſaid* A. S. *the wages juſtly due to him for his ſaid ſervice: Theſe are therefore to command you forthwith to ſummon the ſaid* A. M. *to appear before me at* ——— *in the ſaid county, on* ——— *the* ——— *day of this preſent month of* ——— *at the hour of* ——— *in the afternoon of the ſame day, to ſhew cauſe why the ſaid wages ſhould not be paid. And be you then there to certify what you ſhall have done in the premiſſes. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of the reign of* ——.

B. Order

B. Order for payment of the ſame.

Weſtmorland. WHEREAS *information and complaint hath been made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *of* ——— *in the ſaid county, huſbandman, that he the ſaid* A. S. *was duly hired by* A. M. *of* ——— *in the ſaid county, huſbandman, to be a ſervant in huſbandry to and with him the ſaid* A. M. *for one whole year, to wit, from* Whitſuntide *in the year of our lord* ——— *to* Whitſuntide *now or laſt paſt* [or, *artificer, glaſſman, pitman, labourer,* or otherwiſe as the caſe ſhall be] *and that he the ſaid* A. S. *hath duly performed the ſaid ſervice; yet nevertheleſs, that he the ſaid* A. M. *did refuſe to pay to him the ſaid* A. S. *the wages juſtly due unto him for ſuch ſervice as aforeſaid; And whereas the ſaid* A. M. *having appeared before me, in purſuance of my ſummons for that purpoſe, hath not proved to me, that the ſaid wages have been duly paid to him the ſaid* A. S. *as aforeſaid, nor hath ſhewed to me any juſt cauſe why the ſaid wages ſhould not be paid, and hath not paid the ſame:* [Or, *And whereas it duly appears to me as well upon the oath of* A. C. *conſtable of* ——— *aforeſaid, as otherwiſe, that he the ſaid* A. C. *by virtue of my precept to him directed, did duly ſummon the ſaid* A. M. *to appear before me at a certain time and place therein prefixed, to ſhew cauſe why the ſaid wages ſhould not be paid; and whereas the ſaid* A. M. *hath neglected to appear according to the ſaid ſummons, and hath not ſhewed any cauſe as aforeſaid*] *I therefore, having duly examined into the truth and matter of the ſaid complaint, and upon due conſideration had thereof, do hereby adjudge, determine, and order, that he the ſaid* A. M. *upon due notice hereof, do pay or cauſe to be paid to him the ſaid* A. S. *the ſum of* ———*which appears to me to be juſt and reaſonable to be paid by him the ſaid* A. M. *to him the ſaid* A. S. *as and for his wages as aforeſaid. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

C. Warrant of diſtreſs for the ſame.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. S. *of* ——— *in the ſaid county, huſbandman, hath duly complained unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. M. *of* ——— *in the ſaid county, huſbandman, hath refuſed*

ſed to pay unto him the ſaid A. S. *the wages juſtly due unto him for ſervice in huſbandry for one whole year truly and faithfully performed by him the ſaid* A. S. *to him the ſaid* A. M. [Or, as the caſe ſhall be] *And whereas the ſaid* A. M. *having appeared before me in purſuance of my ſummons for that purpoſe, hath not proved to me that the ſaid wages have been paid to him the ſaid* A. S. *as aforeſaid, and hath not ſhewed any juſt cauſe why the ſame ſhould not be paid* [Or, *And whereas the ſaid* A. M. *hath been duly ſummoned by me to ſhew cauſe to me why the ſaid wages ſhould not be paid, but he the ſaid* A. M. *hath neglected to appear according to the ſaid ſummons, and hath not ſhewed any cauſe as aforeſaid*] *I therefore the ſaid juſtice, upon due conſideration had thereof, on the* ——— *day of* ——— *now laſt paſt, by writing under my hand and ſeal did thereupon determine and order, that he the ſaid* A. M. *ſhould pay to him the ſaid* A. S. *the ſum of* ——— *which appeared to me to be juſt and reaſonable to be paid by him the ſaid* A. M. *to him the ſaid* A. S. *as and for his wages as aforeſaid; And whereas it duly appears to me, that he the ſaid* A. M. *on the ſaid* ——— *day of* ——— *now laſt paſt, had due notice of my ſaid order, and that due demand of the ſaid ſum of* ——— *was then made of him the ſaid* A. M. *by him the ſaid* A. S. *but that he the ſaid* A. M. *did not then pay, nor hath yet paid the ſame, nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. M. *and if within the ſpace of* [*four*] *days next after ſuch diſtreſs by you made, the ſaid ſum of* ——— *together with the reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by the ſale thereof, that you pay the ſaid ſum of* ——— *unto him the ſaid* A. S. *returning the overplus upon demand unto him the ſaid* A. M. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs, being thereout firſt deducted. Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year* ———.

D. Warrant for a ſervant on complaint of the maſter, for miſbehaviour, on the 20 G. 2. *c.* 19.

Weſtmorland. { To the conſtable of ———.

WHEREAS *information and complaint hath been made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. M. *of* —— *in the ſaid county, huſbandman,* [*artificer, labourer,* or as the caſe ſhall be] *that* A. S. *of* ——— *aforeſaid in the ſaid county, huſbandman, was hired by him the ſaid* A. M. *to be ſervant in huſbandry to him the ſaid* A. M. *for one whole year, from* Whitſuntide *now laſt paſt, until* Whitſuntide *now next enſuing; and that he the ſaid* A. S. *hath in his ſaid ſervice* [or, *employment*] *been guilty of divers miſdemeanors, miſcarriages, and ill behaviour, towards him the ſaid* A. M. *and particularly* [as the caſe ſhall be]; *Theſe are therefore to command you forthwith to bring the ſaid* A. S. *before me to anſwer unto the ſaid complaint, and to be further dealt withal according to law. Given under my hand and ſeal, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

E. Commitment of the ſervant thereupon to the houſe of correction.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at —— in the ſaid county.

WHEREAS *information and complaint hath been made* ——— (the ſame as above, reciting the complaint) *And whereas in purſuance of the ſtatute in that caſe made and provided, I have duly examined the proofs and allegations of both the ſaid parties, touching the matter of the ſaid complaint, and upon due conſideration had thereof, have adjudged and determined and do hereby adjudge and determine the ſaid complaint to be true: Theſe are therefore to command you the ſaid conſtable forthwith to convey the ſaid* A. S. *to the ſaid houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive the ſaid* A. S. *into your cuſtody in the ſaid houſe of correction, there to remain, and be corrected, and held to hard labour for the ſpace*

of one kalendar month [or for a leſſer time] *from the date hereof. And for your ſo doing, this ſhall be your ſufficient warrant. Given under my hand and ſeal, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

F. Or otherwiſe he may be puniſhed by abatement of wages, as follows:

THE ſame as above to ——— *and do hereby adjudge and determine the ſaid complaint to be true: I do therefore hereby order, as a puniſhment for the ſaid offence, that the ſaid* A. S. *ſhall abate from his wages to be paid to him by the ſaid* A. M. *the ſum of* ——— *and do hereby diſcharge the ſaid* A. M. *from the payment of the ſaid ſum of* ——— *as part of the wages of him the ſaid* A. S. *Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year* ———.

G. Or otherwiſe he may be diſcharged, thus:

——— *and do hereby adjudge and determine the ſaid complaint to be true: I do therefore hereby order, as a puniſhment for the ſaid offence, that the ſaid* A. S. *be diſcharged, and do hereby diſcharge him the ſaid* A. S. *from his ſaid ſervice* [or, *employment*] *and the ſaid* A. M. *from keeping him the ſaid* A. S. *Given under my hand and ſeal the* ——— *day of* ——— *in the* ——— *year* ———.

H. Summons of the maſter, on complaint of the ſervant, for ill uſage; on the 20 *G.* 2. *c.* 19.

Weſtmorland. { To the conſtable of ———.

WHEREAS *complaint hath been made unto me* ——— *one of his majeſty's juſtices of the peace in and for the ſaid county, upon the oath of* A. S. *of* ——— *in the ſaid county, huſbandman,* [*labourer*, &c.] *that he the ſaid* A. S. *was duly hired by* A. M. *of* ——— *aforeſaid in the ſaid county, huſbandman, to be ſervant in huſbandry to him the ſaid* A. M. [or, as the caſe ſhall be] *for one whole year to commence from* Whitſuntide *now laſt paſt; and that he the ſaid* A. S. *did accordingly at the time aforeſaid enter upon, and afterwards until this preſent time hath continued, and doth continue, in the ſaid ſervice* [or *employment*]; *But that he the ſaid* A. M. *during the ſaid ſervice hath miſuſed him the ſaid* A. S. [*refuſed neceſſary proviſion, been guilty of cruelty*

or

or other ill treatment, mentioning the particulars] *These are therefore to require you in his majesty's name, to summon the said* A. M. *by shewing unto him this precept, or leaving a true copy thereof at his usual place of abode, to appear before me on* ——— *at the house of* ——— *in* ——— *in the said county, at the hour of* ——— *in the afternoon of the same day, to answer unto the said complaint. And be you then there with this precept, to certify what you shall have done in the execution thereof. Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year* ———.

I. Discharge of the servant thereupon.

THE same as before, to the end of the complaint ——— *And whereas the said* A. M. *in pursuance of my summons for that purpose hath appeared before me, to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint and charge; but on the contrary it hath been fully and duly proved before me, that he the said* A. M. *is guilty of the several offences so complained of as aforesaid*; [Or, *And whereas it appears to me upon the oath of* A. C. *constable of* ——— *aforesaid, that he the said* A. C. *by virtue of my precept to him directed, did duly summon him the said* A. M. *to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, but he the said* A. M. *hath neglected to appear according to the said summons*] *I therefore, having examined into the truth and matter of the said complaint, and upon due consideration had thereof, do hereby adjudge the said complaint to be true; and thereupon do order that the said* A. S. *be discharged, and do hereby discharge the said* A. S. *from his said service* [or, *employment.*] *Given under my hand and seal the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Sessions.

Sessions, what.

1. THE sessions of the peace is a court of record, holden before two or more justices, whereof one is of the *quorum*, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. *Dalt. c.* 185.

Difference between general, quarter, and special sessions.

2. It seems that the *general* sessions, and *quarter* sessions, are not synonymous; but that the quarter sessions are a species only of the general sessions, and that such sessions only

only are properly called general quarter ſeſſions, which are holden in the four quarters of the year in purſuance of the ſtatute of the 2 *H.* 5. and that any other ſeſſions holden at any other time for the general execution of the juſtices authority, which by the ſaid ſtatute they are authorized to hold oftner than at the times therein ſpecified, if need be, may be properly called *general* ſeſſions, and that thoſe holden on a ſpecial occaſion for the execution of ſome particular branch of their authority, may properly be called *ſpecial* ſeſſions. 2 *Haw.* 42.

3. By the 12 *R.* 2. *c.* 10. The juſtices ſhall keep their ſeſſions in every quarter of the year at leaſt, and by three days, if need be; on pain of being puniſhed according to the diſcretion of the king's council, at the ſuit of every man that will complain. At what time the ſeſſions ſhall be kept.

And by the 2 *H.* 5. *ſt.* 1. *c.* 4. the particular time in every quarter of the year ſhall be as follows; to wit, in the firſt week after the feaſt of *St. Michael*, in the firſt week after the *Epiphany*, in the firſt week after the clauſe of *Eaſter*, and in the firſt week after the tranſlation of *St. Thomas* the martyr; and more often if need be.

Except in *Middleſex*; where the juſtices ſhall keep their ſeſſions twice in the year at leaſt; and more often (if need be) for any riot or forcible entry. 14 *H.* 6. *c.* 4.

The ſtrict, regular expoſition of the aboveſaid ſtatute of the 2 *H.* 5. is, that if the feaſt day fall upon the *ſunday*, the ſeſſions ſhall be held in the week following, and not the ſame week. 2 *H. H.* 49.

Yet it is very plain, that the quarter ſeſſions are variouſly held in ſeveral counties, ſome at one day, ſome at another, yet it hath been ruled, that theſe are each of them good quarter ſeſſions within the ſeveral acts that relate to quarter ſeſſions; for theſe acts, eſpecially the 2 *H.* 5. is only directive and in the affirmative, and therefore, tho' the ſeſſions are held on another day, according to the general direction of the 12 *R.* 2. yet they are quarter ſeſſions. 2 *H. H.* 50.

4. There is no determination by any ſtatute, of any particular place for the ſeſſions to be kept, ſo it be within the county. And if a place within the county be incorporated, and have juſtices of its own, yet the ſame remains part of the county, and the juſtices of the county may notwithſtanding hold their ſeſſions there, altho' it may be that they ſhall not intermeddle with matters ariſing there, ſave only ſuch as happen in their ſeſſions, or with relation thereunto. *Dalt. c.* 185. Where the ſeſſions ſhall be holden.

Precept to ſummon the ſeſſions.

5. And from hence it ſeems to follow, that any two ſuch juſtices may direct their precept under their teſte to the ſheriff, for the ſummons of the ſeſſions, thereby commanding him to return a grand jury before them, or their fellow juſtices at a certain day and place, and to give notice to all ſtewards, conſtables, and bailiffs of liberties, to be preſent and do their duties at ſuch day and place, and to proclaim in proper places throughout his bailiwick, that ſuch ſeſſions will be holden at ſuch day and place, and to attend there himſelf to do his duty. 2 *Haw.* 41.

And ſuch precept ſhould bear teſte, or be dated, fifteen days before the return, and ought forthwith to be delivered to the ſheriff, to the end he may have ſufficient time to proclaim the ſeſſions, to ſummon and return the ſeveral juries, and to warn all officers and others that have buſineſs there, to attend. *Nelſ.* 35.

And it is ſaid that ſuch a precept by any two ſuch juſtices cannot be ſuperſeded by any of their fellows, but only by writ out of chancery. 2 *Haw.* 41.

But the ſeſſions without a previous ſummons is good, but then no man ſhall loſe any thing for default of his appearance there, becauſe no man had notice of their ſitting. *Lamb.* 381. Nor can any one be compelled to appear there. L. *Raym.* 1238.

Mr. *Lambard* puts a caſe from Mr. *Marrow*, that if two or more juſtices appoint the ſeſſions to be holden in one town, and ſo many more appoint a ſeſſions in another town the ſame day, and holds they may be ſo held, and that the preſentments in both are good; but that appearance at one, is a diſcharge of ſervice at the other. But it may be well queſtioned whether they are not both void; for they make two courts of that which ought to be intire and but one: for it doth not appear that the juſtices are required or enabled to hold more than one ſeſſions at a time, and ſo their authority being equal, and ſeeing no preference can be made by the priority of time, or nature of the ſervice, they may be taken to be both void. However the juſtices, by whoſe forwardneſs ſuch diviſion happens, or on whom ſuch miſcarriage is chargeable, are puniſhable for the ſame by information and fine, or putting out of the commiſſion, as the cauſe ſhall require. *Dalt. c.* 185.

Perſons who are to appear there.

6. The perſons who ought to appear at theſe ſeſſions are as follows:

(1) The *juſtices of the peace*; theſe without doubt are compellable to appear at the ſeſſions, for without their appearance the ſeſſions cannot be holden. *Dalt. c.* 185.

But

But a juſtice ought not to join in an order at ſeſſions wherein himſelf is concerned, nor ought his name to be in the caption. An order was quaſhed for that reaſon. 2 *Salk.* 607.

(2) The *cuſtos rotulorum*, who hath cuſtody of the rolls of ſeſſions, ought (by the commiſſion) to be there by himſelf, or by his deputy, who is the clerk of the peace. *Dalt. c.* 185.

(3) The *ſheriff* alſo, by virtue of the commiſſion, by himſelf or his deputy, to receive the fines, to return jurors, to execute proceſs, and what elſe to his office doth appertain. *id.*

(4) All *coroners*. id.

(5) The *conſtables of hundreds* (that is, high conſtables) and all other officers to whom any warrant hath been directed, in order to make return thereof. *id.*

(6) All *bailiffs of hundreds and liberties*, in reſpect they are bound to give an account of all ſeſſions proceſs. *id.*

(7) The *gaoler*; to bring thither his priſoners, and to receive ſuch as may be committed. *Dalt. c.* 185.

(8) The *keeper of the houſe of correction*, to give in a kalendar and account of perſons in his cuſtody. *id.*

(9) All jurors returned by the ſheriff, by virtue of the aforeſaid precept. And the jurors not appearing according to their ſummons, are puniſhable by loſs of iſſues, which uſually make part of the eſtreats of ſeſſions. *id.*

(10) All perſons bound by *recognizance* to anſwer, or to proſecute and give evidence. *id.*

7. And all perſons may freely attend at the ſeſſions for the advancement of publick juſtice, and for the ſervice of the king. And to this end they are (as it were) invited thither by a certain freedom of acceſs, and by protection from common arreſt; a thing that is incident to every court of record, and without which, juſtice would be greatly hindred. So that if a man come voluntarily to the ſeſſions, either to prefer a bill of indictment, or to give information againſt another, or to tender a fine upon an indictment touching himſelf, or do come compelled to make appearance for ſaving his recognizance, and be arreſted by the ſheriff upon common and original proceſs, in his coming thither, or during his tarrying there; it ſeemeth that (upon examination of the matter under his oath) he ſhall be diſcharged thereof by the privilege of this court, even as it is uſed in the higher courts at *Weſtminſter*. *Lamb.* 402. Freedom of acceſs to the ſeſſions.

But Mr. *Hawkins* puts it more doubtfully, ſaying, It is queſtioned whether the ſeſſions, as alſo all courts of record,

may not diſcharge any perſon arreſted, during his journeying to or from ſuch courts, or neceſſary attendance there, by proceſs from any other court: However it ſeems to be agreed, that any ſuch court may diſcharge a perſon who ſhall be ſo arreſted in the face of it. 2 *Haw.* 5.

T. 7 *G.* 2. It ſeemeth to have been agreed in the argument upon Col. *Pitt*'s caſe (which was an arreſt in his return from parliament) that not only in the high court of parliament, but alſo in the inferior courts, the parties to the ſuit, and alſo the witneſſes, are protected in going, continuing, and returning. And this returning hath never been very nicely ſcanned, ſo as to require a man to go the direct road: and the protection is not forfeited by the plea of *going out of the way*, becauſe it may be the party went to buy a horſe, victuals, or other neceſſaries for his journey. Neither is the law ſo ſtrict in point of time, as to require a perſon to ſet out immediately after the trial is over; and for that was cited the caſe of *Hatch* and *Bliſſet*, *T.* 13 *An.* She had a trial at *Wincheſter* aſſizes, which was over on *friday* at four in the afternoon: ſhe ſtaid there till after dinner on *ſaturday*; and in the evening at ſeven was arreſted going home to *Portſmouth*, which is 20 miles: and the court held, that ſhe ought to be diſcharged, her protection not being expired, and a little deviation or loitering would not alter it. *Str.* 987.

Who ſhall act in the ſeſſions as ſolicitor.

8. By the 22 *G.* 2. *c.* 46. No perſon ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter ſeſſions, either with reſpect to matters of a criminal or civil nature, unleſs he is admitted and inrolled according to law; on pain of 50 *l.* to him who ſhall ſue in 12 months, with treble coſts: And if any attorney ſhall permit any perſon to make uſe of his name in the ſaid court, he ſhall in like manner forfeit 50 *l.*

And no clerk of the peace, under-ſheriff, or their deputies, ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at ſuch ſeſſions, on the like pain of 50 *l.*

The ſeſſions may do what two juſtices may.

9. Where authority is given to two juſtices to do any act, the ſeſſions may do it, in all caſes, except where appeal is directed to the ſeſſions. L. *Raym.* 426.

Juſtices may bind over for offences cognizable at ſeſſions.

10. Juſtices may iſſue their warrants for apprehending perſons charged of crimes within the cognizance of the ſeſſions, and bind them over to appear there, altho' the offender be not yet indicted. 1 *H. H.* 579.

Seſſions to proceed by indictment.

11. If juriſdiction be given to the ſeſſions, to hear and determine, and doth not ſay by information, this ſhall be by indictment, and not upon information. *Dalt. c.* 191.

12. The

12. The ſeſſions are not obliged to give any reaſon of their judgment in the orders they make, no more than any other of the courts of law. 2 *Salk.* 607. Need not give their reaſons.

13. By *Holt* Ch. J. The ſeſſions is all as one day, and the juſtices may alter their judgments at any time whilſt it continues. 2 *Salk.* 606. Orders may be altered the ſame ſeſſions.

14. In the caſe of *Thornby* and *Fleetwood*, *T.* 6 *G.* (which was upon a writ of error in the king's bench brought againſt a judgment given in the court of common pleas) the court was equally divided; whereupon it was conſidered what was further to be done. And after ſeveral expedients, which were judged impracticable, the parties at laſt conſented that the judgment ſhould be affirmed, ſo that the caſe thereupon might come before the houſe of lords for a final determination. And *Pratt* Ch. J. delivered the opinion of the court thus: The plaintiffs in error move us for an affirmance: as to that you ſee the court is divided, and there can be no rule: but in this caſe, becauſe the party againſt whom it is to be affirmed, is deſirous and willing it ſhould be ſo, we are all of opinion that upon his conſent the judgment of the common pleas may be affirmed. But leſt this be brought in future ages as a precedent of an affirmance upon a diviſion, we direct the officer to make the rule ſpecial in this caſe, on recital of the difference in opinion amongſt the judges, and the conſent of the party. *Str.* 383, 4. Court equally divided.

T. 8 *G.* 2. *K.* and the juſtices of *Weſtmorland.* Order of two juſtices of the borough for removing a poor family; appeal to the ſeſſions of the county, at which the juſtices were equally divided; ſo no determination was made, nor the appeal adjourned. A *mandamus* was directed to all the juſtices of the county in general, to proceed on the appeal. And it was ſaid, that the juſtices ought in this caſe to have adjourned the appeal, or continued it over to a ſubſequent ſeſſions, till by the coming of more juſtices it might have been determined. *Seſſ. C. V.* 2. 193.

Or if the court ſhall be ſtill divided, as ſo it may happen in ſmall counties or towns corporate where the juſtices are but few, or where the number is reduced by reaſon of the reſt being intereſted; in order that the cauſe may not be hung up for ever, it may be adviſable (according to the courſe preſcribed in the caſe of *Thornby* and *Fleetwood* abovementioned) for the court, by conſent of the parties, to affirm or quaſh, and thereupon ſtate the caſe ſpecially, to be laid before the judges of aſſize, or rather before the court of king's bench; for the judges of aſſize are oftentimes ſufficiently employed with the proper buſineſs of the

circuit, without being importuned with theſe matters of inferior conſequence.

Seſſions cannot refer.

15. A judge of *niſi prius* by conſent of parties may make a rule to refer a cauſe; but the ſeſſions cannot do ſo, tho' by conſent. They may refer a thing to another to examine, and make report to them for their determination, but cannot refer a thing to be determined by the other. 2 *Salk.* 477.

How far the ſeſſions hath power over its own members.

16. It ſeemeth certain, that the ſeſſions hath no authority to amerce any juſtice, for his non-attendance at the ſeſſions, as the judges of aſſize may for the abſence of any ſuch juſtice at the gaol delivery: for it is a general rule, that *inter pares non eſt poteſtas*, it being reaſonable rather to refer the puniſhment of perſons in a judicial office, in relation to their behaviour in ſuch office, to other judges of a ſuperior ſtation, than to thoſe of the ſame rank with themſelves. And therefore it ſeems to have been holden, that if a juſtice at the ſeſſions, who is not of the *quorum*, ſhall uſe ſuch expreſſions towards another who is of the *quorum*, for which if he were a private perſon he might be committed or bound to his good behaviour, yet the ſeſſions hath no authority to commit him, or to bind him to his good behaviour: And yet it ſeems to be agreed, that if a juſtice give juſt cauſe to any perſon to demand the ſurety of the peace againſt him, he may be compelled by any other juſtice to find ſuch ſecurity; for the publick peace requires an immediate remedy in all ſuch caſes. 2 *Haw.* 41, 42.

Whether they may iſſue a capias utlagatum.

17. The ſeſſions may proceed to outlawry in caſes of indictments found before them; and that, by the common law: and in caſes of popular actions, by the ſtatute of the 21 *J. c.* 4. But they cannot iſſue a *capias utlagatum*, but muſt return the record of the outlawry into the king's bench, and there proceſs of *capias utlagatum* ſhall iſſue. 2 *H. H.* 52. *Lamb.* 521.

But by the 12 *Co.* 103. They that have power to award proceſs of outlawry, have alſo a power to award a *capias utlagatum*, as incident to their authority and juriſdiction.

Whether they may award an attachment.

18. Generally, the ſeſſions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. *H.* 8 *G.* 2. *K.* and *Bartlett. Seſſ. C. V.* 2. 176.

Juſtices not puniſhable for what is done in ſeſſions.

19. The juſtices are not puniſhable for what they do in ſeſſions. *Stam.* 173.

Manner of proceeding in ſeſſions.

20. The manner of proceeding at the ſeſſions, is as follows: Firſt, the juſtices being met, the uſual courſe is with three oyes to proclaim the ſeſſions, and then read the

Commiſſion read.

commiſſion of the peace. *Dalt. c.* 185.

21. Then

21. Then the grand jury are called and ſworn, and the charge given to them. *id.* Grand jury ſworn.

22. If there be any who are to take the oaths, in order to qualify them for offices, this muſt be done between the hours of 9 and 12 in the forenoon, and not otherwiſe. 25 *C.* 2. *c.* 2. *ſ.* 2. Taking oaths.

23. The king's proclamation againſt profaneneſs and immorality is alſo to be read; and likewiſe there are divers acts of parliament required to be read in the ſeſſions, as the 5 *El. c.* 1. againſt popery, and the riot act 1 *G. c.* 5. and the black act 9 *G. c.* 22. And the 11 & 12 *W. c.* 15. about ale meaſures, 30 *C.* 2. *c.* 3. about burying in woollen, are required to be given in charge at the ſeſſions. And the 4 & 5 *W. c.* 24. 7 & 8 *W. c.* 32. 3 & 4 *An. c.* 18. and 3 *G.* 2. *c.* 25. concerning jurors, are to be read in *Midſummer* ſeſſions yearly. And the 2 *G.* 2. *c.* 24. againſt bribery and corruption in elections of members of parliament is to be read at every *Eaſter* ſeſſions. Acts to be read.

24. Then the recognizances may be called, eſpecially ſuch as are to proſecute and give evidence, that ſo bills may be drawn and prepared. *Dalt. c.* 185. Recognizances to give evidence called.

25. Altho' it is in many places uſed, to try a man for felony the ſame ſeſſions in which the indictment is found, yet it ſeems highly reaſonable, if the priſoner deſire it to be deferred, and ſhew cauſe probable, to defer it. For that, 1. The ſeſſions are holden oftner than the aſſizes. 2. The ſpeedy trials ſeem to be in favour of the priſoner, and *volenti non fit injuria*. 3. If a traverſe upon an indictment of nuſance be not triable the ſame ſeſſions that it is joined, but a man ſhall have time to provide for it; much more in matter of life, where uſually the party is in priſon, and may well be ſuppoſed leſs able to provide for it, and in the nature of it requires greater conſideration. *Dalt. c.* 185. Trying for felonies at the ſame ſeſſions.

And, in another place, it is ſaid, that it is made a doubt, whether a trial can be had of a felon the ſame ſeſſions he pleads, unleſs he conſents to it. *Dalt. c.* 185.

26. The bills being ready, the parties bound over for that purpoſe are ſworn to give evidence upon the bills; and the courſe is, to bid the evidence go with the grand jury, where they conſider of the bill, and either find it or not find it, and then return it. *id.* Bills before the grand jury.

27. Whilſt the jury is gone out of court, the uſual way is, to proceed upon motions and orders touching ſettlements, baſtardy, nuſances, and the like; and to call perſons bound over to the peace or good behaviour, but it may not be beſt to diſcharge them till the end of the ſeſſions, becauſe bills may be preferred againſt them. *id.* Other buſineſs whilſt the grand jury are gone out; ſuch as motions, appeals, recognizances.

Errors in form to be amended.

28. Upon appeals to be made to the ſeſſions againſt judgments or orders, the juſtices ſhall cauſe any defect of form in ſuch original judgments or orders, to be rectified and amended, and then ſhall proceed upon the merits. 5 *G.* 2. *c.* 19. *ſ.* 1.

Certificates of nuſances removed.

29. Mr. *Shaw* (Tit. *Seſſions*) ſays, no indictment for a nuſance ſhall be quaſhed or diſcharged, unleſs two juſtices do certify to the court upon their own view, either by certificate under their hands or in perſon, that the nuſance is removed; and for this he quotes 3 *Cro.* 584. *Layton*'s caſe. But that caſe only mentions a certificate in general, and the certificate in that caſe was not a certificate of two juſtices, but of ſeveral inhabitants adjoining; and it ſhould ſeem that the ſeſſions may be well ſatisfied of ſuch removal of a nuſance, by other evidence, as well as by that of two juſtices.

Traverſes tried.

30. Then may be called the perſons bound by recognizance at the laſt ſeſſions, to proſecute their traverſes at the preſent ſeſſions. For if a perſon indicted of a treſpaſs or other miſdemeanor, do appear, and ſhall plead not guilty, and traverſe the indictment, he ſhall enter into recognizance to proſecute his traverſe at the next quarter ſeſſions. For in *Bumſtead*'s caſe, 11 *C.* The whole court was of opinion, that juſtices of the peace may not inquire, try, and determine civil offences, in one and the ſame day; for the party ought to have a convenient time to provide for the trial. *Cro. Car.* 448.

And on the trial of a traverſe, the defendant muſt appear in the court, at the bar, in his proper perſon; and then the indictment is read to the jury; and the proſecutor and his witneſſes are called to give evidence, and are heard; and if the defendant is found guilty, the court ſets a fine upon him adequate to the offence, or other puniſhment as the law directs. *Crown Cir.* 50, 51.

In caſe of treſpaſs and aſſault, the court frequently recommends the defendants to talk with the proſecutor, that is, to make him amends for the injury done him; and if the proſecutor comes and acknowledges a ſatisfaction received, the court will ſet a ſmall fine on the defendant, as 3*s.* 4*d.* or 12*d.* *Cro. Cir.* 52.

Sometimes the proſecutor and defendant agree, before the defendant pleads to the indictment; and then the defendant comes into court in his proper perſon, and pleads guilty to the indictment; and upon proving, by a ſubſcribing witneſs, a general releaſe executed by the proſecutor, the defendant ſubmits to a ſmall fine, ſuch as the court is pleaſed to impoſe. *Cro. Cir.* 52.

There are frequent proſecutions at the ſeſſions for trifling aſſaults, in which caſes it is adviſable for a defendant not to put himſelf to the expence of trying the indictment; but to give notice to the proſecutor, that he intends to plead guilty to the indictment; in which caſe the proſecutor attends the court with his witneſſes, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his miſbehaviour towards the proſecutor: But before that is done, the court will admit the defendant to call ſuch witneſſes as he deſires, and will examine them by way of mitigation. *Cro. Cir.* 54.

Trial for petit larceny and other felonies.

31. And becauſe the arraignment and trial of priſoners is a great part of the buſineſs of the ſeſſions, I will take notice of ſome parts thereof, and proceedings thereupon:

Arraignment.

Towards the end of the ſeſſions, when it appears what bills are come in againſt the priſoners, the gaoler being called to ſet his priſoners to the bar, and the crier being called to make a bar, that is, to diſpoſe of the company, that a way be made open from the court to the priſoners, that the court, jury, and priſoners may ſee each other, one of the priſoners is called to; *A. B.* hold up thy hand. *Dalt. c.* 185.

Holding up the hand.

Yet it is not neceſſary that he hold up his hand at the bar, or be commanded ſo to do; for this is only a ceremony, for making known the perſon of the priſoner to the court, and if he anſwers that he is the ſame perſon, it is all one. 2 *Haw.* 308.

Guilty or not guilty.

Then he is acquainted with the effect of the charge laid againſt him, Thou *A. B.* ſtandeſt indicted, by the name of *A. B.* for that thou——(and ſo recite the indictment). How ſayeſt thou, *A. B.* Art thou guilty of this felony and petit larceny whereof thou ſtandeſt indicted, or not guilty? *Dalt. c.* 185.

Mute.

If he make no anſwer at all, and will not plead, it is beſt to aſk him three or more times, and to tell him the danger of ſtanding mute, and the grievouſneſs of the judgment of the *peine fort & dure*; and yet if he will ſtand mute, nothing more can be done concerning him till judgment, but to record it. *id.*

But if it be for petit larceny only, he ſhall not be put to his *peine fort & dure*, as in caſe of grand larceny, but he ſhall have the like judgment as if he had confeſſed the indictment. 2 *Haw.* 329.

If he pleads privilege, it hath been adjudged, that where proceedings are merely at the ſuit of the king, as upon indictment, or upon information brought by the attorney general, no privilege ſhall be allowed; but where the pro-

ceedings are at the ſuit of the king and of the party, as in caſe of a common informer, there the defendant may have his privilege. 1 *Lutw.* 62.

Confeſſion. If he anſwer that he is guilty, then the confeſſion is recorded, and no more done till judgment. *Dalt. c.* 185.

Trial by the country. But if he ſay, not guilty, he is then aſked; *culp prit*, how wilt thou be tried? *Dalt. c.* 185.

Which was formerly a very ſignificant queſtion, tho' it is not ſo now; becauſe anciently trial by battel, and trial by ordeal was uſed, as well as by the country, or a jury.

Therefore it is now uſually anſwered, By god and the country. *Dalt. c.* 185.

Humanity towards the priſoner. Mr. *Hawkins* obſerves, that every perſon at the time of his arraignment, ought to be uſed with all the humanity and gentleneſs which is conſiſtent with the nature of the thing, and under no other terror or uneaſineſs than what proceeds from a ſenſe of his guilt, and the misfortune of his preſent circumſtances; and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unleſs there be ſome danger of a reſcous or eſcape. 2 *Haw.* 308.

And the court ought to exhort him to anſwer without fear, and to acquaint him that he ſhall have juſtice done to him. 2 *Inſt.* 316.

Witneſſes called. Next, the priſoner having put himſelf upon his country, the proſecutors are called on their recognizances to give evidence. *Dalt. c.* 185.

Jury called. Then the jury are called on their panel, thus, You good men that are returned and impanelled, to try the iſſue joined between our ſovereign lord the king, and the priſoner at the bar, anſwer to your names. *Dalt. c.* 185.

Proclamation. Which done, and they appearing a full jury, a proclamation is made; If any can inform the king's attorney, or this court, of any treaſons, murders, felonies, or other miſdemeanors againſt *A. B.* the priſoner at the bar, let them come forth, for the priſoner ſtands upon his deliverance. *Dalt. c.* 185.

Challenge. Then it is ſaid to the priſoner, You priſoner at the bar, the perſons that you ſhall now hear called, are to paſs upon your trial (upon your life and death, if it is a capital offence); if you will challenge them, or any of them, you muſt challenge them as they come to the book to be ſworn, and before they be ſworn. *Dalt. c.* 185.

Jury ſworn. Then call the foreman of the jury, and ſay unto him, Lay your hand on the book, and look upon the priſoner; You ſhall well and truly try, and true deliverance make,

between

between our ſovereign lord the king, and the priſoner at the bar, whom you ſhall have in charge, and a true verdict give according to your evidence: So help you god.

Then call the ſecond, and ſo ſwear him in like manner, and ſo on to 12, and neither more nor leſs. 2 *H. H.* 293.

Then count them 12, and ſay, You good men that are ſworn, you ſhall underſtand, that *A. B.* now priſoner at the bar, ſtands indicted, for that he———(and ſo recite the indictment): To which indictment he hath pleaded not guilty, and for his trial hath put himſelf upon god and the country, which country you are; ſo that your charge is, to inquire whether he be guilty of the felony or petit larceny whereof he ſtands indicted, or not guilty; If you find him guilty, you ſhall ſay ſo, and inquire what goods and chattels he had at the time of the ſaid felony and petit larceny committed, or at any time ſince: (Or, if it be for felony above petit larceny,—then, what goods and chattels, lands and tenements he had at the time of the ſaid felony committed, or at any time ſince:) If you find him not guilty, you ſhall inquire, whether he did fly for it, and if you find that he fled for it, you ſhall inquire what goods and chattels he had at the time of ſuch flight. If you find him not guilty, and that he did not fly for it, you ſhall ſay ſo, and no more: and ſo hear your evidence. 2 *H. H.* 293, 294. *Dalt. c.* 185. Jury charged.

Then call the witneſſes, and ſwear them, one by one, thus: *The evidence that you ſhall give on the behalf of our ſovereign lord the king, againſt* A. B. *priſoner at the bar, ſhall be the truth, the whole truth, and nothing but the truth: So help you god.* Dalt. c. 185. Witneſſes ſworn.

When the witneſſes for the king have been examined, if the priſoner deſires that any witneſſes ſhould be examined for him, they muſt be examined alſo on oath. Witneſſes for the priſoner.

On trials of this nature, the priſoner ſhall not have counſel allowed to him, unleſs a point of law ariſe, proper to be debated; nor a copy of the indictment. 2 *Haw.* 400, 402. Priſoner not to have counſel.

But in offences under felony, a defendant may be heard by his counſel. *Wood b.* 4. *c.* 5.

Otherwiſe, the court is to be of counſel with the priſoner, and ought to adviſe him for his good, and not take advantages too ſtrictly againſt him. *Dalt. c.* 185. Court to be of counſel with him.

When the priſoner hath done, and hath been heard all he hath to ſay in his defence, the evidence is ſummed up by the court to the jury. And if they cannot agree on their verdict at the bar, a bailiff muſt be ſworn to keep the jury, thus; *You ſhall ſwear that you ſhall keep this jury, without* Evidence ſummed up.

without meat, drink, fire, or candle; you ſhall ſuffer none to ſpeak to them, neither ſhall you ſpeak to them your ſelf, but only to aſk them whether they are agreed: So help you god. id.

Verdict. The jury coming back, the priſoner is brought to the bar; then the jury is called; they appearing, ſay, Set *A. B.* to the bar; Who being there, ſay, Look upon the priſoner; how ſay you, is *A. B.* guilty of the felony (or as the caſe is) whereof he ſtands indicted, or not guilty? If they ſay, not guilty, bid him down upon his knees. If they ſay, guilty; record it, and bid him be taken away. Then ſay, hearken to the verdict as the court hath recorded it; You ſay, *A. B.* is guilty [or, is not guilty] of the felony whereof he ſtands indicted. *id.*

Judgment. Then make a proclamation and ſay, All manner of perſons keep ſilence, whilſt judgment is giving againſt the priſoner at the bar, upon pain of impriſonment. Then ſet the priſoner to the bar, and give the ſentence. *id.*

Wages of the juſtices, and eſtreats. 32. By the 12 *R.* 2. *c.* 10. The juſtices ſhall take for their wages 4*s.* the day for the time of their ſeſſions, and their clerk 2*s.* of the fines and amerciaments, riſing and coming of the ſame ſeſſions, by the hands of the ſheriffs. And the lords of franchiſes ſhall be contributory to the ſaid wages, after the rate of their part of fines and amerciaments.

But no duke, earl, baron, or baneret, ſhall take any wages. 14 *R.* 2. *c.* 11.

And the eſtreats of the juſtices ſhall be doubled, and the one part delivered by them to the ſheriff, to levy the money thereof riſing, and thereof to pay the juſtices their wages by the hand of the ſheriff, by indenture betwixt them thereof to be made. 14 *R.* 2. *c.* 11.

Fees in ſeſſions. 33. The fees in ſeſſions for traverſing, trying, or diſcharging indictments, diſcharging recognizances of the peace and good behaviour, and the like, do vary according to the cuſtom of the country; and in that place the cuſtom of the place is to be obſerved. *Dalt. c.* 41.

By *Holt* Ch. J. The court cannot commit for non-payment of fees; for if there is right, there is remedy; and *indebitatus aſſumpſit* will lie, if the fee is certain; if uncertain, *quantum meruit.* L. *Raym.* 703.

Precept to ſummon the ſeſſions.

Weſtmorland. J. P. *and* K. P. *eſquires, juſtices of our ſovereign lord the king, aſſigned to keep the peace in the county of* ——— *aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed*

committed in the ſaid county, and one of us the quorum; To the ſheriff of the ſame county, greeting: On the behalf of our ſaid ſovereign lord the king, we command you, that you omit not by reaſon of any liberty within your county, but that you enter therein, and that you cauſe to come before us, or others, juſtices aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, on ——— the ——— day of ——— now next enſuing, at the hour of ten in the forenoon of the ſame day, at ——— in the ſaid county, 24 good and lawful men of the body of the county aforeſaid, then and there to inquire, preſent, do and perform, all and ſingular ſuch things, which on the behalf of our ſaid ſovereign lord the king ſhall be injoined them: Alſo that you make known to all coroners, keepers of gaols and of houſes of correction, high conſtables, and bailiffs of liberties, within the county aforeſaid, that they be then there to do and fulfil thoſe things which by reaſon of their offices ſhall be to be done: Moreover, that you cauſe to be proclaimed thro' the ſaid county in proper places the aforeſaid ſeſſions of the peace to be held at the day and place aforeſaid: And do you be then there, to do and execute thoſe things which belong to your office: And have you then there as well the names of the jurors, coroners, keepers of gaols, and of houſes of correction, high conſtables, and bailiffs aforeſaid, as alſo this precept. Given under our ſeals at A. in the county aforeſaid, the ——— day of ——— in the ——— year of the reign of ———

When the ſheriff hath received this precept, he muſt direct ſeveral warrants to the ſeveral bailiffs of hundreds and liberties, containing in them the ſubſtance of the ſaid precept.

The ſtile of the ſeſſions.

Weſtmorland. THE *general quarter ſeſſions of the peace, holden at ——— in and for the ſaid county, on the ——— day of ——— in the ——— year of the reign of our ſovereign lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others, juſtices of our ſaid ſovereign lord the king, aſſigned to keep the peace in the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, and of the quorum, and ſo forth.*

Note,

Note, It is not ſufficient to ſay, held at ſuch a place ſuch a day *by adjournment*; but it muſt appear when the original ſeſſions began, and that it was regularly continued to ſuch adjournment. *Str.* 832, 865.

Condition of a recognizance to appear and give evidence at the ſeſſions, in caſe where the king is a party.

THE *condition of this recognizance is ſuch, that if the abovebound* A. W. *ſhall perſonally appear at the next general quarter ſeſſions of the peace, to be holden at* ——— *in and for the county of* ——— *and then and there give ſuch evidence as he knoweth, againſt* ——— *concerning his felonious taking and carrying away* ——— *the property of* ——— *and do not depart thence without leave of the ſaid court, then this recognizance to be void.*

Subpœna to give evidence, in caſe where the king is not party.

GEORGE *the ſecond* ——— *To* A. W. B. W. *and* C. W. *of* ——— *yeomen, greeting. We command you, and every of you, that all buſineſs being laid aſide, and all excuſes ceaſing, you do in your proper perſons appear before our juſtices aſſigned to keep our peace in the county of* ——— *and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in our ſaid county committed, at the ſeſſion of the peace to be holden at* ——— *in and for the ſaid county, on* ——— *the* ——— *day of* ——— *now next enſuing, at the hour of ten in the forenoon of the ſame day, to teſtify all and ſingular thoſe things, which you, or any of you, ſhall know, in a certain appeal now depending between the churchwardens and overſeers of the poor of the pariſh of* ——— *appellants, and the churchwardens and overſeers of the poor of the pariſh of* ——— *removants, touching and concerning the removal of* A. P. *from the ſaid pariſh of* ———[Or, in caſe where the king is a party, ——— *to teſtify the truth and give evidence on our behalf, againſt* A. O. *in a caſe of treſpaſs and aſſault*] *And this you and every of you are in no wiſe to omit, under the penalty of* 10 l. *for you and every of you. Witneſs* J. P. *eſquire, the* —— *day of* ——.

Note; There may be four witneſſes put in one *ſubpœna*.

A *ſub-*

A *ſubpœna* ticket for a witneſs.

MR. A. W. *By virtue of a writ of* ſubpœna, *to you and others directed, and herewith ſhewn unto you, you are required perſonally to be and appear at the next general quarter ſeſſions of the peace to be holden at* ——— *in and for the county of* ——— *to teſtify the truth according to your knowledge in a certain appeal now depending, between the churchwardens and overſeers of the poor of the pariſh of* ——*appellants, and the churchwardens and overſeers of the poor of the pariſh of* —— *removants, concerning the removal of* A. P. *from the ſaid pariſh of* ——— *to the ſaid pariſh of* ——— *on the part of the ſaid appellants: And herein you are not to fail, on pain of* 10 l. *Dated the* —— *day of* —— *in the* —— *year* ———.

Sewers.

BY the 23 *H.* 8. *c.* 5. Commiſſions of ſewers ſhall be iſſued, in all parts of the realm, where need ſhall require.

And by the 13 *El. c.* 9. For one year after the expiration of a commiſſion of ſewers, the juſtices of the peace, or ſix of them, (2 *Q.*) may execute the powers of the ſaid commiſſion, unleſs a new commiſſion ſhall be iſſued in the mean time.

But as the power and authority of theſe commiſſioners of ſewers is not general enough to fall in with the deſign of this book, I ſhall chuſe to refer thoſe whom it may particularly concern, to the ſtatutes at large which treat of this title; namely.

23 *H.* 8. *c.* 5.
25 *H.* 8. *c.* 10.
3 & 4 *Ed.* 6. *c.* 8.
7 *An. c.* 10.

Beſides which general acts, there are others which concern the cities of *London* and *Weſtminſter* only, and other places within the bills of mortality; to wit,

3 *J.* *c.* 14.
19 *C.* 2. *c.* 3. *ſ.* 20.
22 & 23 *C.* 2. *c.* 17.
2 *W. ſeſſ.* 2. *c.* 8.
8 & 9 *W. c.* 37.

Sheep.

None ſhall have above 2000 ſheep.

1. BY the 25 *H.* 8. *c.* 13. For the preventing many farms being accumulated into few hands, and for the encouragement of tillage, it is enacted, that no perſon ſhall have above 2000 ſheep at one time, at ſix ſcore to the hundred, except it be upon his own inheritance only, and except what are neceſſary for his houſhold; on pain of forfeiting 3*s.* 4*d.* for every ſheep above that number, half to the king, and half to him that will ſue.

And if any perſon ſhall happen to have more, by reaſon of being executor or adminiſtrator, he ſhall ſell off within a year, till he have but 2000.

But ſheep bequeathed to a child within age, ſhall not be reckoned in the number.

And lambs are not to be reckoned ſheep, till the ſecond *Midſummer* after they are lambed.

And the juſtices of the peace may enquire of this offence by a jury, or by information.

None ſhall have above two farms.

2. And for the ſame reaſon, no perſon ſhall take above two farms with houſes thereon; nor ſhall any perſon have two, except he dwell in the pariſh where they both are; on pain of 3*s.* 4*d.* a week in like manner. *id.*

Carrying ſheep over ſea.

3. By the 8 *El.* *c.* 3. No perſon ſhall ſend or carry over ſea, or receive into any ſhip for that purpoſe, any ſheep alive; on pain for the firſt offence, of forfeiting all his goods, half to the king, and half to him that will ſue, and being impriſoned for a year, and at the year's end in ſome open market town, in the fulneſs of the market, on the market day, he ſhall have his left hand cut off, and nailed up in the openeſt place of the market; And for the ſecond offence, ſhall be adjudged a felon, and ſhall ſuffer death as in caſes of felony; But not to work corruption of blood. And the juſtices of the peace may enquire of, hear and determine the ſame.

But the offender may have his clergy, as well in the caſe of the cutting off his hand, as in the caſe of felony. 3 *Inſt.* 104.

And by the 12 *C.* 2. *c.* 32. No perſon ſhall export, or lay on board with intent to export any ſheep, except wether ſheep for the ſhip's uſe only; on pain of forfeiting the ſame, and for every ſheep 20*s.* half to the king, and half to him that ſhall ſue, at the ſeſſions or elſewhere. And the owner of the ſhip, knowing the offence, ſhall forfeit his intereſt in the ſhip and furniture. And the maſter and

mariners

mariners aſſiſting, ſhall forfeit, in like manner, all their goods and chattels, and be impriſoned three months. And any merchant or other perſon offending herein, ſhall be diſabled to require any debt or account from any factor or other. And the offender may be tried in the county from whence they were exported, or where he ſhall be apprehended. Proſecution to be in one year. And if the ſhip belongs to an alien, it ſhall be forfeited to the king.

Killing ſheep in the night.

4. If any perſon ſhall in the night time maliciouſly and willingly kill any ſheep; he ſhall be guilty of felony: but to avoid judgment of death, he may make his election to be tranſported for ſeven years. And three juſtices (1 *Q.*) may hear and determine the ſame. 22 & 23 *C.* 2. *ſ.* 7.

Hurting ſheep in the night.

5. If any perſon ſhall in the night time maliciouſly and willingly maim, wound, or otherwiſe hurt any ſheep, whereby the ſame is not killed; he ſhall forfeit to the party grieved treble damages, by action of treſpaſs or on the caſe. 22 & 23 *C.* 2. *c.* 7.

Sheep ſtealing or killing, 10 *l.* reward.

6. If any perſon ſhall felonioufly drive away, or in any other manner felonioufly ſteal any ſheep or lamb; or ſhall wilfully kill any ſheep or lamb, with a felonious intent to ſteal the carcaſe or any part thereof; or ſhall aſſiſt or aid in committing any the ſaid offences; he ſhall be guilty of felony without benefit of clergy. 14 *G.* 2. *c.* 6. *ſ.* 1. 15 *G.* 2. *c.* 34.

And every perſon, who ſhall apprehend and proſecute to conviction any ſuch offender, ſhall have a reward of 10 *l.* In order to which, he ſhall have a certificate ſigned by the judge, before the end of the aſſizes, certifying ſuch conviction, and where the offence was committed, and that the offender was apprehended and proſecuted by the perſon claiming the reward; and if more than one claim the reward, he ſhall therein appoint what ſhare ſhall be paid to each claimant: Which certificate being tendred to the ſheriff, he ſhall pay the ſame within a month, without deduction, on pain of forfeiting double, with treble coſts: The ſame to be allowed on his accounts, or to be repaid him out of the treaſury. 14 *G.* 2. *c.* 7. *ſ.* 2, 3.

Sheriff.

Sheriff, what.

1. SHERIFF *(Shireve)* in *Saxon* is *ſcirgereſa*, from *ſciran*, to *ſhare* or divide, for that the whole realm is parted and divided into *ſhires*; and *gereſa*, the *comes*, earl, or governor, in the *Belgick* called *graef* or *grave*. The word *comes*, or *count*, came firſt into *Europe* out of the eaſtern countries, probably from the *Hebrew cône or cûne*, which denoteth ſtrength, firmneſs, or ſtability; and the word *county*, in Latin *comitatus*, ſeemeth to be nothing elſe but the diviſion or allotment over which the *comes* or *count* had juriſdiction. And when the counts or earls left the cuſtody of the counties, then was the cuſtody thereof committed to the *viſcounts*, or *vicecomites* (which is the *Latin* name for the ſheriffs); ſo called, becauſe they ſupply the place of the *comes* or earl. The *earl* was otherwiſe called by the Saxons *eorl*, *ealdor*, *ealderman* (elder, or alderman), becauſe they were uſually men of age and experience; by a like derivation as that of *ſenators* among the *Romans*.

Who ſhall be ſheriff.

2. By four ſeveral ſtatutes it is enacted, that none ſhall be ſheriff, except he have ſufficient land within the ſhire, to anſwer the king and his people. 9 *Ed.* 2. *ſt.* 2. 4 *Ed.* 3. *c.* 9. 5 *Ed.* 3. *c.* 4. 13 & 14 *C.* 2. *c.* 21.

How choſen.

3. At the common law, the ſheriff was choſen by the county; but now by the ſtatute of the 14 *Ed.* 3. *c.* 7. he ſhall be appointed yearly on the morrow of *All Souls*, at the exchequer, by the chancellor, treaſurer, and chief baron, taking to them the chief juſtices.

Except in *London*, and where the office is a man's freehold or inheritance. 23 *H.* 6. *c.* 8.

His oath of office.

4. The ſheriff (except in *Wales* and *Cheſter)* at the entring upon his office ſhall take the following oath (to be adminiſtred in purſuance of a writ of *dedimus poteſtatem.)*

I A. B. *do ſwear, that I will well and truly ſerve the king's majeſty in the office of ſheriff in the county of* —— *and promote his majeſty's profit in all things that belong to my office, as far as I legally can or may; I will truly preſerve the king's rights, and all that belongeth to the crown; I will not aſſent to decreaſe, leſſen, or conceal the king's right, or the rights of his franchiſes; And whenſoever I ſhall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchiſes, ſuits, or ſervices, or in any other matter or thing, I will do my utmoſt to make them be reſtored to the crown again; and if I may not do it my ſelf, I will certify and inform the king thereof, or ſome of his judges; I will*

will not reſpite or delay to levy the king's debts, for any gift, promiſe, reward, or favour, where I may raiſe the ſame without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man, for any gift, reward, or promiſe, nor for favour or hatred; I will diſturb no man's right, and will truly and faithfully acquit at the exchequer, all thoſe of whom I ſhall receive any debts or duties belonging to the crown; I will take nothing whereby the king may loſe, or whereby his right may be diſturbed, injured, or delayed; I will truly return, and truly ſerve all the king's writs, according to the beſt of my ſkill and knowledge; I will take no bailiffs into my ſervice, but ſuch as I will anſwer for, and will cauſe each of them to take ſuch oaths as I do, in what belongeth to their buſineſs and occupation; I will truly ſet and return reaſonable and due iſſues of them that be within my bailiwick, according to their eſtate and circumſtances, and make due panels of perſons able and ſufficient, and not ſuſpected, or procured, as is appointed by the ſtatutes of this realm: I have not ſold or let to farm, nor contracted for, nor have I granted or promiſed for reward or benefit, nor will I ſell or let to farm, nor contract for, or grant for reward or benefit, by myſelf or any other perſon for me, or for my uſe, directly or indirectly, my ſheriffwick, or any bailiwick thereof, or any office belonging thereunto, or the profits of the ſame, to any perſon or perſons whatſoever; I will truly and diligently execute the good laws and ſtatutes of this realm; and in all things well and truly behave my ſelf in my office, for the honour of the king, and the good of his ſubjects, and diſcharge the ſame according to the beſt of my ſkill and power: So help me god. 3 G. c. 15. ſ. 18, 19.

Sheriff ſelling inferior offices.

5. By the 4 *H.* 4. *c.* 5. The ſheriff in perſon ſhall continue within his bailiwick, and ſhall not let it to farm.

And by the 3 *G.* *c.* 15. *ſ.* 10. None ſhall buy, ſell, let, or take to farm the office of under ſheriff, gaoler, bailiff, or other office pertaining to the office of high ſheriff; on pain of 500 *l.* half to the king, and half to him that ſhall ſue (in two years).

Sheriff's officers not to be attornies, or jurors.

6. By the 1 *H.* 5. *c.* 4. Sheriff's officers ſhall not be attornies.

And the ſheriff ſhall return none of his officers upon inqueſts: on pain of 40 *l.* half to the king, and half to him that ſhall ſue, in the ſeſſions, or elſewhere. 23 *H.* 6. *c.* 10.

Appointment of the under ſheriff.

7. The under ſheriff ſhall be appointed by the high ſheriff, becauſe he ſhall anſwer for him; and he ſhall take the

like oath as the high ſheriff, *mutatis mutandis.* 3 *G. c.* 15. *ſ.* 19.

Appointment of bailiffs.

8. The bailiffs alſo ſhall be appointed by him for the like reaſon; and every bailiff, when he gives ſecurity upon entring into his office, ſhall make it part of the condition of ſuch ſecurity, that he will deliver a copy of the clauſe in the act of the 2 *G.* 2. *c.* 22. concerning the carrying of priſoners for debt to alehouſes, which is inſerted more at large in title Gaoler.

And ſuch bailiff, or other perſon returning juries, or intermeddling with proceſſes, ſhall take the following oath of office, before a judge of aſſize, or the *cuſtos rotulorum*, or two juſtices of the peace (1 *Q.*)

I A. B. *ſhall not uſe or exerciſe the office of bailiff corruptly, during the time that I ſhall remain therein, neither ſhall or will accept, receive, or take, by any colour, means, or device whatſoever, or conſent to the taking of any manner of fee or reward of any perſon or perſons, for the impanelling or returning of any inqueſt, jury, or tales, in any court of record, for the king, or betwixt party and party, above* 2 s. *or the value thereof, or ſuch fees as are allowed and appointed for the ſame by the laws and ſtatutes of this realm, but will according to my power, truly and indifferently, with convenient ſpeed, impanel all jurors, and return all ſuch writ or writs touching the ſame, as ſhall appertain to be done by my duty or office, during the time that I ſhall remain in the ſaid office: So help me god.* 27 El. c. 12. ſ. 2.

And perſons acting before they have taken the ſaid oath, ſhall forfeit 40 *l.* half to the king, and half to him that ſhall ſue, in the ſeſſions, or other court of record. *id. ſ.* 4, 6.

And if they commit any act contrary to their ſaid oath, they ſhall forfeit (in like manner) to the party grieved his treble damages. *id. ſ.* 5.

And the ſheriff's bailiffs ſhall not be in the ſame office in three years after. 1 *H.* 5. *c.* 4. Except in *London*, *Middleſex*, *Durham*, *Weſtmorland*, and towns being counties of themſelves. 3 *G. c.* 15. *ſ.* 21.

The ſheriff's two courts; the torn, and county court.

9. The ſheriff hath a juriſdiction both in criminal and civil caſes; and for this purpoſe he hath two courts, his *tourn* for criminal cauſes, which is therefore the king's court; the other is his *county court* for civil cauſes, and this is the court of the ſheriff himſelf. 3 *Salk.* 322.

Sheriff's receiving the accounts of his predeceſſor.

10. The new ſheriff being appointed, and ſworn, he ought at or before the next county court, to deliver a writ of diſcharge to the old ſheriff, who is to ſet over all the priſoners in the gaol ſeverally by their names (together with

with all his writs), preciſely, by view and indenture between the two ſheriffs; wherein muſt be comprehended all the actions which the old ſheriff hath againſt every priſoner, tho' the executions are of record. And till the delivery of the priſoners to the new ſheriff, they remain in the cuſtody of the old ſheriff, notwithſtanding the letters patents of appointment, the writ of diſcharge, and the writ of delivery. Neither is the new ſheriff obliged to receive the priſoners, but at the gaol only. But the office of the old ſheriff ceaſes, when the writ of diſcharge cometh to him. *Wood b.* 1. *c.* 7.

And by the 20 *G.* 2. *c.* 37. The old ſheriff ſhall turn over to his ſucceſſor, by indenture and ſchedule, all ſuch writs and proceſs as ſhall remain unexecuted; and the new ſheriff ſhall execute and return the ſame.

11. The ſheriff having a juſtice of the peace his warrant directed to him, ſhall execute the ſame; but he need not go in perſon to execute it, but may authorize another to do it. 2 *Haw.* 86. Sheriff how far amenable to the juſtices of the peace.

And it is no excuſe to the ſheriff to return that he could not execute a precept becauſe of reſiſtance; for he may take with him the power of the county. 13 *Ed.* 1. *ſt.* 1. *c.* 30.

Alſo the ſheriff, on ſummons, is bound to attend the ſeſſions of the peace, there to return his precepts, to take the charge of the priſoners, to receive fines for the king, and the like. 2 *Haw.* 41.

And it ſeems clear from the general reaſon of the law, which gives all courts of record a kind of diſcretionary power over all abuſes by their own officers, that the ſheriff is puniſhable by the juſtices in ſeſſions, for defaults in executing their writs and precepts. 2 *Haw.* 142, 143.

12. Every ſheriff is a principal conſervator of the peace, by the common law, and may *ex officio* award proceſs of the peace, and take ſurety for it; and it ſeems to be the better opinion, that the ſecurity ſo taken by him is by the common law looked on as a recognizance or matter of record, and not as a common obligation. 2 *Haw.* 33. Sheriff a conſervator of the peace, but not to act as juſtice.

But no ſheriff ſhall exerciſe the office of a juſtice of the peace, in any county wherein he is ſheriff; and in ſuch caſe, his acts as a juſtice ſhall be void. 1 *Mar. ſeſſ.* 2. *c.* 8.

13. By the 14 *Ed.* 3. *c.* 10. and 19 *H.* 7. *c.* 10. The ſheriff ſhall have the keeping of gaols. Sheriff to have the keeping of gaols.

And in all *civil* cauſes, as in caſes of impriſonment for debt, the ſheriff or gaoler (at the election of the party) ſhall

be anſwerable for eſcapes ſuffered by the gaoler; but if the gaoler ſuffer a *felon* voluntarily to eſcape, this inaſmuch as it reacheth to life, is felony only in the gaoler, but the ſheriff may be indicted, fined, and impriſoned. 1 *H. H.* 597.

Sheriff anſwerable for money levied by him.

14. Where the ſheriff levies money on a *fieri facias*, the plaintiff may have an action of debt againſt him for the money, becauſe it was received by him to the plaintiff's uſe, and the defendant is diſcharged of it; and it lies againſt his executors if he die. 3 *Salk.* 323.

Paſſing his accounts.

15. The manner of paſſing his accounts is directed at large by the ſtatutes of the 3 *G. c.* 15 & 16. which being foreign to our purpoſe, are not here inſerted.

Paying rewards for convicting offenders.

16. But after the ſheriff hath paid the rewards for apprehending highwaymen, houſebreakers, and ſuch like, he ſhall not be obliged to tarry until the paſſing of his accounts for the repayment thereof, but he may immediately apply to the commiſſioners of the treaſury, who ſhall upon inſpecting the certificate of the conviction, and the receipts of the perſons to whom the rewards were paid, forthwith repay the ſame to the ſheriff without fee. 3 *G. c.* 15. *ſ.* 4.

How long he ſhall continue in office.

17. No ſheriff ſhall continue in his office above one year, 14 *Ed.* 3. *c.* 7. 28 *Ed.* 3. *c.* 7. Except in *London*, *Middleſex*, and towns being counties of themſelves, and where the office is a man's freehold, or inheritance. 23 *H.* 6. *c.* 8. 3 *G. c.* 15. *ſ.* 21.

And by the 1 *R.* 2. *c.* 11. None that hath been ſheriff ſhall be ſo again within three years, if there be other ſufficient.

But by the 17 *Ed.* 4. *c.* 6. The ſheriff may hold his office after the year, during *Michaelmas* and *Hilary* terms, if not before lawfully diſcharged.

Sheriff dying before the expiration of his office.

18. If the ſheriff ſhall die before his office ſhall be expired, the under ſheriff ſhall execute the ſame in the deceaſed ſheriff's name, till a new ſheriff be ſworn, and be anſwerable for the execution thereof, as the deceaſed ſheriff would have been. 3 *G. c.* 15. *ſ.* 8.

Ships.

Wilfully deſtroying.

1. IF any owner of, or captain, maſter, mariner, or other officer belonging to any ſhip, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the ſhip of which he is owner,

owner, or unto which he belongeth, or in any wiſe direct or procure the ſame to be done; with intent to prejudice any perſon that ſhall underwrite any policy of inſurance thereon, or any merchant that ſhall load goods thereon; he ſhall be guilty of felony without benefit of clergy. 11 *G.* *c.* 29. *ſ.* 6.

And if it is committed within the body of a county, it ſhall be tried there; if on the high ſeas, it ſhall be tried as in caſes of piracy. *ſ.* 7.

And by the 20 *G.* 2. *c.* 52. The ſaid offence is excepted out of the general pardon.

2. By the 12 *An. ſt.* 2. *c.* 18. and 26 *G.* 2. *c.* 19. If any perſon ſhall plunder any ſhip in diſtreſs, or wilfully do any thing tending to the immediate loſs of ſuch ſhip; he ſhall be guilty of felony without benefit of clergy. Plundering or deſtroying a ſhip in diſtreſs.

3. All perſons who ſhall feloniouſly ſteal any goods of the value of 40 *s.* in any ſhip, boat, or veſſel, on any navigable river, or in any port of entry or diſcharge, or from any wharf or key, or ſhall be preſent and aſſiſting therein; he ſhall be guilty of felony without benefit of clergy. 24 *G.* 2. *c.* 45. Stealing goods from on ſhip-board.

Shoemakers.

THE ſhoemakers duty in the true making of ſhoes, is inſerted in the title **Leather.**

Differences between ſhoemakers and their workmen, are treated of under the title **Servants.**

Silks.

THE *duties* on ſilks and calicoes, being under the ſame regulations with the duties on printed linens, the law concerning them is inſerted under the article of *linen cloth* in the title **Exciſe.**

Concerning ſervants and other workmen in the ſilken manufactures, ſee title **Servants.**

1. No perſon ſhall exerciſe the trade of a ſilk thrower, unleſs he hath ſerved 7 years apprenticeſhip; on pain of 40 *s.* a month, half to the king, and half to him that ſhall Silk throwers.

ſue in any court of record, or at the aſſizes, or quarter ſeſſions of the peace. 13 & 14 *C.* 2. *c.* 15. *ſ.* 2.

Alamodes and luteſtrings.

2. By the 9 & 10 *W.* *c.* 43. No foreign ſilks, called alamodes or luteſtrings ſhall be imported, but in the port of *London*, on notice firſt given to the commiſſioners of the cuſtoms, and licence had from them. *ſ.* 1.

And if they be imported elſewhere, or without ſuch notice and licence, and the duties paid, they ſhall be forfeited, or the value thereof, and be ſold and exported again; and the offender ſo importing, and alſo the receiver, and perſon offering to ſell the ſame, ſhall forfeit 500 *l.* *ſ.* 3.

And the commiſſioners ſhall cauſe them to be marked and ſealed. *ſ.* 2.

And if any perſon ſhall counterfeit the cuſtom houſe ſeal, or ſeal of the luteſtring company; he ſhall forfeit 500 *l.* and be ſet in the pillory two hours. *ſ.* 5.

And any perſon who ſhall buy or ſell or have in his cuſtody any alamodes or luteſtrings, ſealed or marked with a counterfeit ſeal or mark, ſhall forfeit the ſame and 500 *l.* *ſ.* 5.

And any perſon authorized by writ of aſſiſtance under the ſeal of the exchequer, or with a conſtable or other publick officer, inhabiting near the place, with a warrant from a juſtice of the peace, and in the day time, may enter any houſe, ſhop, cellar, warehouſe, or other place, to ſearch for and ſeize any alamodes or luteſtrings imported contrary to this act, or not ſealed or marked, or marked with a counterfeit mark or ſeal, and in caſe of reſiſtance may break open doors, cheſts, trunks, and other package; and every juſtice ſhall grant ſuch warrant to any credible perſon, making oath that he hath reaſon to ſuſpect or believe, that there are ſome of the ſaid ſilks ſo fraudulently imported or not ſealed and marked, or ſealed or marked with a counterfeit ſeal or mark in the place or places where he intends to ſearch. *ſ.* 5.

And all officers belonging to the cuſtoms, ſheriffs, mayors, bailiffs, conſtables, and other officers, ſhall be aiding in the execution hereof. *ſ.* 6.

(But none but cuſtomhouſe officers, or perſons deputed by the luteſtring company, and having writs of aſſiſtance from the exchequer, ſhall ſeize luteſtrings or alamodes within the bills of mortality. 5 *An.* *c.* 20. *ſ.* 3.)

The ſaid penalties ſhall be two thirds to the king, and one third to him that ſhall ſeize or ſue in any court of record. *ſ.* 9.

Skins. See Leather.

Slander.

I Do not find it any where clearly ſettled, how far ſlander, or ſcandalous words, are cognizable before juſtices of the peace, by reaſon of the different circumſtances in matters of ſo indeterminate a nature; for the ſame words, when ſpoken of different perſons, and even of the ſame perſon with a different emphaſis and manner of delivering them, may receive a very different interpretation.

In general, it ſeemeth that words which directly tend to a breach of the peace, as if one man challenge another, are cognizable before juſtices of the peace, for which the party may be bound to the good behaviour, and even indicted. 2 *Salk.* 698. 1 *Keb.* 931.

But if they do not tend directly to a breach of the king's peace, but are matters only of private ſlander between party and party, which do no way affect the publick adminiſtration of juſtice, as in caſe where the common people are wont to call one another knaves, and rogues, and whores, and thieves; I do not find it aſſerted by any good authority, that juſtices of the peace have any juriſdiction at all in ſuch matters; but the proper remedy ſeems to be in one of theſe two ways, either by a proſecution in the ſpiritual court, or by an action upon the caſe at common law.

In the former caſe, it is provided by the ſtatute of *Circumſpecte agatis*, 13 *Ed.* 1. and alſo by the ſtatute of the 9 *Ed.* 2. *c.* 4. that in matters of defamation, no prohibition ſhall lie to the ſpiritual court from the courts temporal: But Bp. *Gibſon* ſays, that in order to ſecure cauſes of defamation in the ſpiritual court, againſt prohibitions, they muſt have theſe two incidents; 1. That they concern matters merely ſpiritual. 2. That they concern mere ſpiritual matter only, and not mixt with any matter determinable at common law. And the proſecution in this court muſt be only for the puniſhment of ſin, and the welfare of the ſoul; for the party cannot ſue there for amends or damages. *Cod.* 1070.

But the remedy in ſuch caſe (as hath been ſaid) muſt be by action in the courts temporal, if the words will bear it: But it ſeems very difficult, for the reaſons above mentioned, to define what words are actionable, and what not. The moſt general rule ſeems to be, that words are then moſt properly actionable, when they are ſpoken of a perſon in relation to his profeſſion or calling, and not

when ſpoken at large without any ſuch particular application.

And by the 21 *J. c.* 16. Actions upon the caſe for ſlanderous words, ſhall be brought within two years after the words ſpoken, and not after: and if the jury find the damages under 40*s.* the plaintiff ſhall have no more coſts than damages.

But if the words ſpoken are not in themſelves actionable, and damages are given to the plaintiff for a conſequential loſs only, there the plaintiff may have larger coſts. And the diſtinction is this: The ſtatute expreſsly mentions actions of *ſlander*; but if the words are ſuch, as give the party an action in reſpect of the ſpecial damage reſulting therefrom, and are not in themſelves actionable, it is not properly an action of ſlander, but a ſpecial action on the caſe; and therefore is not within this ſtatute. *E.* 12 *G.* 2. *Baſs* and *Hickford. Andr.* 375.

M. 17 *G.* 2. *Underwood* and *Parks.* In an action for words, the defendant pleaded *not guilty*, and offered to prove the words to be true, in mitigation of damages: But *Lee* Ch. J. refuſed to admit the ſame, ſaying, that at a meeting of all the judges upon a caſe that aroſe in the common pleas, a large majority of them had determined, not to allow it for the future, but that it ſhould be *pleaded*, whereby the plaintiff might be prepared to defend himſelf, as well as to prove the ſpeaking of the words. *Str.* 1200.

Finally, there is one ſpecies of ſlander, of which the law takes a more eſpecial notice; and that is, when it relates to the great men of the realm: Concerning whom, it is enacted by the 3 *Ed.* 1. *c.* 34. 2 *R.* 2. *ſt.* 1. *c.* 5. and 12 *R.* 2. *c.* 11. *that none ſhall tell or publiſh any falſe news or tales, whereby diſcord, or occaſion of diſcord or ſlander may grow, between the king and his people, or the great men of the realm; and that none ſhall deviſe, ſpeak, or tell any falſe news or lies, of any prelates, lords, judges, or other great men of the realm, whereof any diſcord or ſlander may ariſe; on pain of impriſonment, until he hath brought into court the firſt author of the tale; and if he cannot find the author, he ſhall be puniſhed by advice of the council.*

Publiſh any falſe news or tales] But this extends only to extrajudicial ſlanders; for if a man charge them in due courſe of law, altho' the charge be falſe, yet there will lie no action *de ſcandalis magnatum*, neither at common law, nor by theſe ſtatutes. 2 *Inſt.* 228.

Smugglers. See **Excise.**
Snares. See **Game.**
Snuff. See **Tobacco.**
Soap. See **Excise.**
Sodomy. See **Buggery.**

Soldiers.

FOR ſoldiers inliſting into foreign ſervice, ſee title **Foreign Service.**

The ancient military order was, when the king was to be ſerved with ſoldiers for his war, a knight or eſquire of the county, that had revenues, farmers, and tenants, would covenant with the king by indenture inrolled in the exchequer, to ſerve the king for ſuch a term with ſo many men ſpecially named in a liſt, in his war. 1 *Inſt.* 71.

And in conſequence hereof, there are many regulations by divers ſtatutes concerning the ſame; which being now out of uſe, it is thought ſufficient juſt to mention them; to wit,

18 *H.* 6. *c.* 19.
7 *H.* 7. *c.* 1.
3 *H.* 8. *c.* 5.
2 & 3 *Ed.* 6. *c.* 2.
4 & 5 *P.* & *M.* *c.* 3.
5 *Ed.* 6. *c.* 5.

But the preſent regulations concerning the ſoldiery (the militia excepted) are chiefly contained in the yearly acts againſt mutiny and deſertion; the ſubſtance whereof is contained in the following ſections.

I. Articles of war.
II. Inliſting ſoldiers.
III. Muſter.
IV. Carriages.
V. Billeting.
VI. To remove in time of elections.
VII. Having wives or children, to be examined as to their ſettlement.

VIII. Deſtroying

VIII. Deſtroying the game.
IX. Sued for debt.
X. Guilty of crimes.
XI. Pay.
XII. Deſerting.
XIII. Setting up trades after their diſcharge.
XIV. Maintenance after their diſcharge.
XV. Probate of their wills.

I. Articles of war.

The king may form articles of war for better government of the forces, and conſtitute courts martial, with power to try any crime by ſuch articles of war. 30 G. 2. c. 6. ſ. 53.

But no perſon ſhall be adjudged to ſuffer any puniſhment extending to life or limb, by the ſaid articles, except for crimes expreſſed to be ſo puniſhable by this act. ſ. 54.

II. Inliſting ſoldiers.

When any perſon ſhall be inliſted, he ſhall in four days, but not ſooner than 24 hours, be carried before the next juſtice, or chief magiſtrate of a town corporate (not being an officer in the army), and before him ſhall be at liberty to declare his diſſent to ſuch inliſting; and on ſuch declaration, and returning the inliſting money, and paying 20s. for the charges expended on him, he ſhall be forthwith diſcharged, in preſence of ſuch magiſtrate: But if he ſhall refuſe or neglect in 24 hours to return and pay ſuch money as aforeſaid, he ſhall be deemed to be inliſted, as if he had given his aſſent thereto before ſuch magiſtrate. If he declare that he voluntarily inliſted himſelf, the juſtice or chief magiſtrate ſhall forthwith certify under his hand, that ſuch perſon is duly inliſted, ſetting forth the place of his birth, age, and calling (if known), and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were read to him, and that he has taken the oath mentioned in the ſaid articles of war: And if any perſon ſo certified as duly inliſted ſhall refuſe to take the ſaid oath of fidelity before ſuch magiſtrate, the officer from whom he hath received ſuch money, may detain and confine him till he ſhall take it: And every military officer that ſhall act contrary hereto, or offend herein, ſhall incur

cur the like penalty as is by this act inflicted for making a falſe muſter, to be recovered as any penalties by this act are recoverable. *ſ.* 69.

Which ſaid ſecond and ſixth ſections of the articles of war are theſe:

(SECT. II.)

Art. 1. Whatſoever officer or ſoldier ſhall preſume to uſe traiterous or diſreſpectful words againſt the ſacred perſon of his majeſty, his royal highneſs the prince of *Wales*, or any of the royal family; if a commiſſioned officer, he ſhall be caſhiered; if a non-commiſſioned officer or ſoldier, he ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

Art. 2. Any officer or ſoldier who ſhall behave himſelf with contempt or diſreſpect towards the general, or other commander in chief of our forces, or ſhall ſpeak words tending to his hurt or diſhonour, ſhall be puniſhed according to the nature of his offence, by the judgment of a court martial.

Art. 3. Any officer or ſoldier who ſhall begin, excite, cauſe or join in any mutiny or ſedition, in the troop, company, or regiment, to which he belongs, or in any other troop or company in our ſervice, or on any party, poſt, detachment, or guard, on any pretence whatſoever, ſhall ſuffer death, or ſuch other puniſhment as by a court martial ſhall be inflicted.

Art. 4. Any officer, non-commiſſioned officer, or ſoldier, who being preſent at any mutiny or ſedition, does not uſe his utmoſt endeavours to ſuppreſs the ſame, or coming to the knowledge of any mutiny, or intended mutiny, does not without delay give information thereof to his commanding officer, ſhall be puniſhed by a court martial with death, or otherwiſe, according to the nature of the offence.

Art. 5. Any officer or ſoldier who ſhall ſtrike his ſuperior officer, or draw, or offer to draw, or ſhall lift up any weapon, or offer any violence againſt him, being in the execution of his office, on any pretence whatſoever, or ſhall diſobey any lawful command of his ſuperior officer, ſhall ſuffer death, or ſuch other puniſhment as ſhall, according to the nature of his offence, be inflicted upon him by the ſentence of a court martial.

(SECT. VI.)

Art. 1. All officers and ſoldiers, who having received pay, or having been duly inliſted in our ſervice, ſhall be convicted of having deſerted the ſame, ſhall ſuffer death, or ſuch other puniſhment as by a court martial ſhall be inflicted.

Art. 2. Any non-commiſſioned officer or ſoldier, who ſhall, without leave from his commanding officer, abſent himſelf from his troop or company, or from any detachment with which he ſhall be commanded, ſhall, upon being convicted thereof, be puniſhed according to the nature of his offence, at the diſcretion of a court martial.

Art. 3. No non-commiſſioned officer or ſoldier ſhall inliſt himſelf in any other regiment, troop, or company, without a regular diſcharge from the regiment, troop, or company, in which he laſt ſerved, on the penalty of being reputed a deſerter, and ſuffering accordingly. And in caſe any officer ſhall knowingly receive and entertain ſuch non-commiſſioned officer or ſoldier, or ſhall not, after his being diſcovered to be a deſerter, immediately confine him, and give notice thereof to the corps in which he laſt ſerved, he the ſaid officer ſo offending ſhall by a court martial be caſhiered.

Art. 4. Whatſoever officer or ſoldier ſhall be convicted of having adviſed or perſuaded any other officer or ſoldier to deſert our ſervice, ſhall ſuffer ſuch puniſhment as ſhall be inflicted upon him by the ſentence of a court martial.

And the *oath* mentioned in the ſaid articles of war, is as follows:

I ſwear to be true to our ſovereign lord king George, *and to ſerve him honeſtly and faithfully, in defence of his perſon, crown, and dignity, againſt all his enemies or oppoſers whatſoever: And to obſerve and obey his majeſty's orders, and the orders of the generals and officers ſet over me by his majeſty.*

And the juſtice's certificate of the whole may be this:

Weſtmorland. I *DO hereby certify, that* A. S. *of the age of* ——— *years, born at* ——— *in the county of* ——— *ſhoemaker, came this day before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county of* ——— *and declared that on the* ——— *day of* ——— *now laſt paſt, he did voluntarily inliſt himſelf as a private ſoldier*

to

to ſerve his ſaid majeſty king George *the ſecond, in the regiment of foot commanded by* ——— *and that he now freely conſenteth unto the ſame: And thereupon I do hereby alſo certify, that he the ſaid* A. S. *is duly inliſted as aforeſaid; and that the ſecond and ſixth ſections of the articles of war againſt mutiny and deſertion were alſo before me read unto him this day, and that he hath alſo at the ſame time taken before me the oath mentioned in the ſaid articles of war. Given under my hand at* ——— *in the ſaid county of* ——— *the* ——— *day of* ———.

But if any perſon ſhall receive the inliſting money, knowing it to be ſuch, and ſhall abſcond, or refuſe to go before ſuch magiſtrate, in order to declare his aſſent or diſſent, he ſhall be deemed to be liſted, and may be proceeded againſt as if he had taken the ſaid oath before ſuch magiſtrate. 30 *G.* 2. *c.* 6. *ſ.* 70.

III. Muſter.

Every commiſſary or muſter maſter, upon any muſter to be made, ſhall give convenient notice thereof to the mayor, or other chief officer, of the place where the ſoldiers are quartered; who ſhall be preſent at every ſuch muſter, and give his utmoſt aſſiſtance for the diſcovering of any falſe muſter: And every muſter maſter neglecting to give ſuch notice, or refuſing the aſſiſtance of ſuch mayor or other officer, ſhall forfeit 50 *l.* and his office. And no muſter roll ſhall be allowed, unleſs ſigned by ſuch mayor or other officer: But if ſuch mayor or officer ſhall not attend, or refuſe to ſign ſuch muſter roll, without giving ſufficient reaſon for ſuch his refuſal; then the commiſſary may proceed to muſter, and ſuch muſter roll ſhall be allowed, tho' not ſigned as aforeſaid, provided that oath be made before a juſtice in 48 hours after ſuch muſter; and the ſaid muſter roll ſhall be then produced, and examined by the ſaid juſtice, who ſhall ſign the ſame, if there appear to be no ſufficient objection to it. *ſ.* 13.

And in *Weſtminſter* and *Southwark*, no muſter ſhall be made, but in preſence of two juſtices (not being officers of the army); unleſs the juſtices, on 48 hours notice to ſix of them, refuſe to attend. *ſ.* 34.

And the commiſſary or muſter maſter ſhall make oath (for which no fee ſhall be taken) before the mayor or chief magiſtrate attending the muſter, if ſuch mayor or chief magiſtrate be a juſtice of the peace, or otherwiſe before a juſtice in the form following; I *A. B.* do ſwear, that I

ſaw

ſaw at the time of making the within muſter, ſuch men or horſes as are borne, and not reſpited, on the muſter roll, for which men or horſes a ſigned certificate or certificates are not indorſed on the back of the roll, certifying their being abſent from the muſter, by reaſon of being employed on ſome other duty of the regiment, or by being ſick, in priſon, or furlough, or at graſs, or by a ſigned leave from the colonel or field officer, or officer commanding the regiment, troop, or company:

Which oath the ſaid commiſſary ſhall inſert and ſubſcribe on the back of the muſter roll tranſmitted by him into the office of the commiſſary general of the muſters. *ſ.* 16.

And if any perſon ſhall give a falſe certificate, to excuſe any ſoldier from muſter or other ſervice, on pretence of being employed on ſome other duty of the regiment, or of ſickneſs, being in priſon, or on furlough; he ſhall forfeit 50 *l.* and be caſhiered and diſabled to hold any military office. And no certificate ſhall excuſe the abſence of any ſoldier, but for the reaſons abovementioned, or one of them; and the commiſſary ſhall ſet down on the roll, at the time of taking the muſter, the reaſon of ſuch abſence, and by whom certified; and not to ſet down any ſuch excuſe, without view of ſuch certificate. *ſ.* 10.

And every officer that ſhall make any falſe muſter of man or horſe, and every commiſſary, muſter maſter, or other officer, who ſhall wittingly allow or ſign the muſter roll, wherein any ſuch falſe muſter is contained, or ſhall take any reward for muſtering or ſigning muſter rolls, ſhall be caſhiered and diſabled. *ſ.* 11.

And if any perſon ſhall be falſly muſtered, or offer himſelf to be falſly muſtered; on proof thereof by oath of two witneſſes, before the next juſtice, and on certificate thereof under the hand of the commiſſary, or chief magiſtrate as aforeſaid, he ſhall be committed to the houſe of correction for ten days: And if any perſon ſhall wittingly furniſh a horſe to be muſtered, he ſhall be forfeited to the informer, if he ſhall belong to the perſon furniſhing the ſame; otherwiſe the offender ſhall forfeit to the informer 20 *l.* on oath by two witneſſes, before the next juſtice, by diſtreſs; and if he ſhall have no ſufficient diſtreſs, or ſhall not pay in four days after conviction, he ſhall be committed to the common gaol for three months, or be publickly whipped, at the diſcretion of the juſtice; and the informer, if a ſoldier, ſhall be diſcharged, if he demands it. *ſ.* 14.

But fictitious names, allowed by his majeſty's order upon the muſter rolls, for the maintenance of widows of officers

ficers who loſt their lives in the late war, or during the late rebellion, ſhall not be conſtrued a falſe muſter. *ſ.* 12.

IV. Carriages.

For proviſion of carriages for the forces in their march, or for their arms, cloaths, and accoutrements, any juſtice of the peace, being duly required thereunto, by an order from his majeſty, or the general of his forces, or the maſter general, or lieutenant general of his majeſty's ordnance, ſhall on ſuch order being brought and ſhewn unto him, by the quartermaſter, adjutant, or other officer of the regiment, troop, or company ordered to march, iſſue out his warrant to the conſtables or petty conſtables of the diviſion, liberty, hundred, or precinct from, through, near, or to which ſuch forces ſhall be ordered to march; requiring them to make ſuch proviſion for carriages, with able men to drive the ſame, as is mentioned in the ſaid warrant; allowing them ſufficient time to do the ſame, that the neighbouring parts may not always bear the burden: And if ſufficient carriages cannot be provided within any ſuch liberty, diviſion, or precinct; then the next juſtice (or juſtices) of the county, riding, or diviſion, ſhall on ſuch order as aforeſaid ſo brought or ſhewn to him, iſſue his warrant to the conſtables or petty conſtables of ſuch next county, riding, diviſion, or precinct, for the purpoſes aforeſaid, to make up ſuch deficiency. *ſ.* 40.

Which warrant may be thus:

Weſtmorland. { To the conſtable of ———.

BY *virtue of an order from* ——— *general of his majeſty's forces, this day brought and ſhewn unto me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, by* ——— *lieutenant in captain* ———*'s company of his majeſty's regiment of foot, commanded by* ——— *you are hereby required to provide* ——— *ſufficient carriages, with able men to drive the ſame, within your conſtablewick, whereby to remove the arms, cloaths, and accoutrements of the ſaid company on their march from* Shap *to* Kirkby *in* Kendale *in the ſaid county; and with them you are to appear at* Shap *aforeſaid to morrow preciſely at five of the clock in the morning. Herein fail you not, as you will anſwer the contrary at your peril. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———.

And

And the officer, who by virtue of the ſaid warrant, is to demand the carriages of the conſtable to whom it is directed, ſhall at the ſame time pay down to him in hand for the uſe of the perſons who ſhall provide ſuch carriages and men, the ſum of 1 *s.* for every mile any waggon with five horſes ſhall travel; and 1 *s.* for every mile any wain with ſix oxen, or four oxen with two horſes ſhall travel; and 9 *d.* for every mile any cart with four horſes ſhall travel; and ſo in proportion for leſs carriages: For which the conſtable ſhall give a receipt. *ſ.* 40.

And ſuch conſtable, or petty conſtable, ſhall appoint ſuch perſons having carriages within their reſpective liberties, as they ſhall think proper, to provide and furniſh ſuch carriages and men. *id.*

And if any military officer ſhall force any carriage to travel more than one day's journey; or ſhall not diſcharge the ſame in due time for their return home; or ſhall ſuffer any ſoldier or ſervant (except ſuch as are ſick), or any woman, to ride in ſuch carriage; or ſhall force any conſtable, by threatnings, to provide ſaddle horſes for themſelves or ſervants; or ſhall force horſes from the owners, by themſelves, ſervants, or ſoldiers; he ſhall forfeit 5 *l.* proof thereof being made on oath before two juſtices, who ſhall certify the ſame to the paymaſter general, or other paymaſter of the forces, who ſhall pay the ſame, according to the order of the ſaid juſtices under their hands and ſeals, who ſhall deduct the ſame out of the officer's pay. *id.*

And no waggon, wain, cart, or carriage, ſhall be obliged to carry above twenty hundred weight. *ſ.* 44.

And if any high or petty conſtable ſhall wilfully neglect or refuſe to execute ſuch warrants for providing carriages; or if any perſon appointed by ſuch conſtable to furniſh any carriage and man, ſhall refuſe or neglect to provide the ſame; or any other perſon ſhall wilfully hinder the execution thereof, he ſhall forfeit not exceeding 40 *s.* nor leſs than 20 *s.* to the poor of the pariſh where ſuch offence ſhall be committed; the ſame to be heard and determined by two juſtices dwelling in or near the place, who ſhall cauſe the penalty to be levied by diſtreſs, *ſ.* 41.

And whereas the ſums to be paid to the conſtables by the officers demanding carriages, are in many caſes not ſufficient to anſwer the charge and expence of providing the ſame, to the great burden of the townſhip, or elſe the perſons performing ſuch carriages are grievouſly oppreſſed; it is enacted, that the treaſurer of the county ſhall without fee pay unto ſuch conſtable all reaſonable ſums by him laid out for carriages, over and above what was or ought

to

to have been paid by the officer requiring ſuch carriages, out of the publick ſtock, according to ſuch rates and orders as the juſtices in ſeſſions ſhall direct, which orders ſhall be made without fee; regard being had to the ſeaſon of the year, and the length and condition of the ways: and if the publick ſtock be not ſufficient, the juſtices in ſeſſions may raiſe money as for gaols and bridges. *ſ.* 42, 43.

That is to ſay, the ſame ſhall be paid out of the general county rate, as directed by the 12 *G.* 2. *c.* 29.

H. 3 *G. K.* againſt *Hunt* and others. The court granted a *mandamus* directed to the juſtices of the peace, to allow the defendants, being conſtables, the extraordinary charges in providing carriages on the late expedition into *Scotland*. *Str.* 42, 93.

V. Billeting.

By the 31 *C.* 2. *c.* 1. No officer, military or civil, nor any other perſon whatſoever, ſhall preſume to place, quarter, or billet any ſoldier, on any ſubject or inhabitant of this realm, of any degree, quality, or profeſſion whatſoever, without his conſent; and every ſuch ſubject or inhabitant may refuſe to ſojourn or quarter any ſoldier, notwithſtanding any command, order, warrant, or billeting whatever. *ſ.* 54.

But by the mutiny act, The conſtables and other chief officers and magiſtrates of cities, towns, villages, and other places, and in their default or abſence, any one juſtice inhabiting in or near ſuch place, and no others, ſhall and may quarter and billet the officers and ſoldiers in inns, livery ſtables, alehouſes, victualling houſes, and the houſes of ſellers of wine by retail to be drank in their own houſes or places thereunto belonging, and all houſes of perſons ſelling brandy, ſtrong waters, cyder, or metheglin, by retail, to be drank in houſes (other than the houſes of diſtillers and of ſhopkeepers, whoſe principal dealings ſhall be more in other goods than in brandy or ſtrong waters, and who do not permit tippling in their houſes) and no other, and in no private houſes whatſoever; nor ſhall any more billets be ordered, than there are effective ſoldiers; and if any conſtable, or ſuch like officer, or magiſtrate as aforeſaid, ſhall preſume to quarter or billet any ſuch officer or ſoldier in any private houſe, without the conſent of the owner or occupier, ſuch owner or occupier ſhall have his remedy at law againſt ſuch magiſtrate or officer for damages; and if any military officer ſhall take upon him to

quarter ſoldiers otherwiſe than by this act, or ſhall offer any menace or compulſion, to any mayor, conſtable, or other civil officer before mentioned, tending to deter and diſcourage any of them from doing their duty, he ſhall on conviction before any two of the next juſtices, by the oath of two witneſſes, be *ipſo facto* caſhiered and diſabled to hold any military employment; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. And if any perſon ſhall be aggrieved by having more ſoldiers billeted than in proportion to his neighbours, on complaint thereof to one juſtice, or if the perſon ſo billeting them be a juſtice, then on complaint to two juſtices, they may relieve him. *ſ.* 22.

Note; the clauſe above recited, relating to ſhopkeepers, might as well be now omitted out of the act; for that by the 17 *G.* 2. *c.* 17. no ſhopkeepers, as ſuch, are allowed to retail any ſpirituous liquors, but only thoſe who keep taverns, victualling houſes, inns, coffee houſes, or alehouſes.

But no juſtice, having any military command, ſhall be concerned in quartering ſoldiers under his immediate command; but all things done by him therein ſhall be void. 30 *G.* 2. *c.* 6. *ſ.* 23.

And if any conſtable, or other officer, ſhall neglect his duty in billeting, for the ſpace of two hours, provided ſufficient notice hath been given before, of the arrival of the forces; or ſhall take any reward to excuſe any perſon; or if any perſon liable ſhall refuſe to receive any ſoldiers, or to furniſh them as required by this act; and be thereof convicted, before one juſtice, by confeſſion, or oath of one witneſs, he ſhall forfeit 5 *l.* (or any ſum not exceeding 5 *l.* nor leſs than 40 *s.*) by diſtreſs, by warrant of ſuch juſtice, to be directed to any other conſtable, or to any overſeer of the poor of the ſaid place. *ſ.* 66.

And if any officer ſhall take any money of any perſon, for excuſing the quartering of ſoldiers, he ſhall be caſhiered and incapacitated. *ſ.* 26.

And if any officer, military or civil, ſhall quarter any of the wives, children, men, or maid ſervants of officer or ſoldier, in any houſe againſt the conſent of the owner; if he is an officer of the army, he ſhall on proof made thereof to the commander in chief of the army, or judge advocate, be *ipſo facto* caſhiered; and if a conſtable, or other civil officer, he ſhall forfeit to the party grieved 20 *s.* on proof thereof to the next juſtice, by diſtreſs. *ſ.* 46.

Officers and ſoldiers, billeted as aforeſaid, ſhall be received and furniſhed with diet and ſmall beer, paying for the ſame as hereafter is mentioned, out of their ſubſiſtence money. *ſ.* 24.

But if any perſon ſhall chuſe rather to furniſh them with candles, vinegar, and ſalt, and with either ſmall beer or cyder, not exceeding five pints a day, *gratis*, and allow them the uſe of fire, and the neceſſary utenſils for dreſſing and eating their meat, and ſhall give notice thereof to the commanding officer, and ſhall furniſh the ſame accordingly; in ſuch caſe, they ſhall provide their own victuals, and the officers ſhall pay the ſums out of the ſubſiſtence money for diet and ſmall beer to ſuch ſoldiers, and not to the perſons on whom they are quartered; except on a march, or recruiting. *ſ.* 25.

In all places where horſe or dragoons ſhall be quartered, the men and their horſes ſhall be billeted in one and the ſame houſe (except in caſe of neceſſity); and in no caſe there ſhall be leſs than one man billeted, where there ſhall be one or two horſes, nor leſs than two men where there ſhall be four horſes, and ſo in proportion. *ſ.* 27.

Officers may remove or exchange men or horſes, with others quartered in the ſame town; provided the numbers ſo exchanged are equal: and the conſtables, or other officers, ſhall billet them accordingly. *ſ.* 28.

Any juſtice by his warrant, may command any conſtable or other officer, to give an account in writing of the number of officers and ſoldiers billeted by them, and alſo of the names of the perſons on whom they are billeted, with the ſtreet or place where they dwell, and the ſigns, if any; that it may appear where they are quartered, the better to prevent abuſes in billeting of them. *ſ.* 67.

In *Weſtminſter* and *Southwark*, the petty conſtables ſhall deliver liſts on oath at every quarter ſeſſions, of the houſes and perſons obliged to receive ſoldiers quartered, and the number billeted in each houſe; the liſts to remain with the clerk of the peace, to be inſpected without fee; and the clerk ſhall deliver copies at 2 *d.* a ſheet containing 150 words: conſtables making default ſhall forfeit 5 *l.* to the poor by diſtreſs, by warrant of one juſtice; for want of diſtreſs, to be impriſoned not more than three months, nor leſs than one. *ſ.* 37.

VI. To remove in time of elections.

On notice from the clerk of the crown, to the ſecretary at war, of any writ made out for the election of a member

to ſerve in parliament, he ſhall ſend orders for removing ſoldiers two miles or more from the place of election, at leaſt one day before the election, and continue at leaſt one day after the poll taken: But this not to extend to *Weſtminſter*, or other place of reſidence of the royal family, or fortified places, or any officer or ſoldier having a right to vote at ſuch election. 8 *G.* 2. *c.* 30.

VII. Having wives or children, to be examined as to their ſettlement.

If any non commiſſion officer or ſoldier ſhall have wife, child, or children; two juſtices may ſummon him, where he is quartered, to make oath of the place of his laſt legal ſettlement; who ſhall obey ſuch ſummons, and make oath accordingly: And the juſtices ſhall give an atteſted copy of ſuch affidavit, to be delivered to the commanding officer, to be produced when required. And being ſummoned again, he ſhall not take another oath with regard to his ſettlement, but ſhall leave a copy of the former. 30 *G.* 2. *c.* 6. *ſ.* 29.

VIII. Deſtroying the game.

If any officer or ſoldier ſhall, without leave of the lord of the manor under his hand and ſeal, take or kill any hare, coney, pheaſant, partridge, pigeon, or other fowl, poultry, or fiſh, or his majeſty's game, and be convicted thereof on oath of one witneſs, before one juſtice; every officer ſo offending ſhall forfeit 5 *l.* to the poor; and the commanding officer upon the place, for every offence committed by any ſoldier under his command, ſhall forfeit 20*s.* to be paid and diſtributed in manner aforeſaid. And if, upon conviction by the juſtices, and demand thereof made by the conſtable or overſeers of the poor, he ſhall not in two days pay the ſaid penalties, he ſhall forfeit his commiſſion. *ſ.* 47.

IX. Sued for debt.

No volunteer ſhall be taken out of the ſervice, by any proceſs, other than for ſome criminal matter, unleſs for a real debt, or other juſt cauſe of action, and unleſs affidavit be made before a judge of the court, that the original ſum due amounts to 10 *l.* a memorandum of which oath ſhall be indorſed on the proceſs; and if he ſhall be other-

wiſe arreſted, the judge may diſcharge him, and award coſts. *ſ.* 64.

But the plaintiff, on notice given in writing of the cauſe of action to ſuch perſon, or left at his laſt place of reſidence before liſting, may file a common appearance, in an action to be brought for any debt, ſo as to intitle him to proceed therein to judgment and outlawry, and to execution, other than againſt his body. *ſ.* 65.

X. Guilty of crimes.

The king may appoint courts martial, for trial of the offences of ſoldiers, by the articles of war. *ſ.* 53.

And every officer and ſoldier who ſhall begin, excite, cauſe, or join in any mutiny or ſedition, or ſhall not uſe his utmoſt endeavours to ſuppreſs the ſame, or ſhall not give immediate notice thereof to his commanding officer, or ſhall deſert, or liſt in any other regiment, or ſhall be found ſleeping on his poſt, or ſhall leave it before relieved, or ſhall hold correſpondence with the enemy, or ſtrike or uſe any violence againſt his ſuperior officer in the execution of his office, or ſhall diſobey his lawful commands, ſhall ſuffer death, or ſuch other puniſhment as a court martial ſhall inflict. *ſ.* 1.

But the trial of offences by a court martial ſhall not exempt them from the ordinary proceſs of law. *ſ.* 9.

And if any officer or ſoldier ſhall be accuſed of any capital crime, or of any violence or offence againſt the perſon, eſtate, or property of any the king's ſubjects, the commanding officer ſhall uſe his utmoſt endeavour to deliver over ſuch accuſed perſon to the civil magiſtrate; and ſhall alſo be aiding to the officers of juſtice, in ſeizing and apprehending him, in order to bring him to trial; on pain, on conviction before two juſtices, by the oaths of two witneſſes, of being *ipſo facto* caſhiered and diſabled; provided the conviction be affirmed at the next ſeſſions, and a certificate thereof be tranſmitted to the judge advocate, who ſhall certify the ſame to the next court martial. *ſ.* 58.

But no perſon acquitted or convicted of capital offences by the civil magiſtrate, ſhall be puniſhed for the ſame by a court martial, otherwiſe than by caſhiering. *ſ.* 57.

By the 19 *G.* 2. *c.* 21. Soldiers convicted of profane curſing or ſwearing, and not paying the penalty, ſhall not be committed to the houſe of correction as other offenders, but ſhall be put in the ſtocks for one hour, for every ſingle offence; and for any number of offences, of

which they ſhall be convicted at one and the ſame time, two hours.

XI. Pay.

The officer who ſhall receive the pay or ſubſiſtence money, ſhall immediately upon receipt thereof, give publick notice to all perſons keeping inns or other places where ſoldiers are quartered, to repair to their quarters, at ſuch time as they ſhall appoint for diſtribution thereof to the officers and ſoldiers, which ſhall be within four days after receipt thereof: And the ſaid innkeepers and others ſhall be firſt paid, before any part of the pay be diſtributed to the officers or ſoldiers; provided the accounts exceed not for a commiſſion officer of horſe under the degree of a captain, for diet and ſmall beer 2 *s.* a day; nor for a commiſſion officer of dragoons under the degree of a captain 1 *s.* nor for a commiſſion officer of foot under the degree of a captain 1 *s.* and for each horſe 6 *d.* nor for one light horſeman's diet and hay and ſtraw for his horſe 1 *s.* nor for one dragoon's diet and hay and ſtraw for his horſe 1 *s.* nor for one foot ſoldier's diet 4 *d.* And if any officer ſhall not give ſuch notice, and ſhall not immediately on producing ſuch account pay the ſame, on complaint and oath made thereof by two witneſſes at the next ſeſſions, the paymaſter (on certificate of the juſtices in ſuch ſeſſions of the ſum due, and to whom the ſame is owing) ſhall pay the ſame out of the ſaid officer's arrears, on pain of forfeiting his office, and diſability; and if no ſuch arrears be due, the paymaſter ſhall deduct the ſums to be paid, purſuant to the juſtices certificate, out of the next pay of the regiment; and ſuch officer ſhall for ſuch his offence, or for neglecting to give ſuch notice, be *ipſo facto* caſhiered. And where it ſhall happen, that the ſubſiſtence money due to any officer or ſoldier, ſhall by any accident not be paid, or ſuch officer or ſoldier ſhall neglect to pay the ſame; or where any forces ſhall be upon their march, ſo that no ſubſiſtence can be remitted to them, or they ſhall neglect to pay the ſame; every ſuch officer ſhall, before his departure out of his quarters, make up the accounts with every perſon with whom ſuch ſoldiers ſhall have quartered, and ſign a certificate thereof, and give the ſame to the party to whom ſuch money is due, with the name of the regiment, troop, or company to which he ſhall belong, that the ſame may be tranſmitted to the paymaſter, who ſhall immediately pay the ſame, under pain as is before directed for non-payment of quarters. 30 *G.* 2. *c.* 6. *ſ.* 33.

XII. Deſerting.

XII. Deſerting.

The conſtable may take up any perſon reaſonably ſuſpected to be a deſerter, and carry him before a juſtice in or near the place, who ſhall examine ſuch ſuſpected perſon; and if by his confeſſion, or the oath of one witneſs, or the knowledge of ſuch juſtice, he ſhall be found to be a deſerter, the juſtice ſhall forthwith cauſe him to be conveyed to the county gaol, or houſe of correction (or the *Savoy* in *London*) and tranſmit an account thereof to the ſecretary at war; and the keeper of ſuch gaol or houſe of correction ſhall receive the ſubſiſtence of ſuch deſerter, for his maintenance while he ſhall be in cuſtody, but ſhall not be intitled to any fee for his impriſonment. *ſ.* 49.

But no officer may break open any houſe to ſearch for deſerters, without a juſtice's warrant; on pain of 20 *l.* *ſ.* 52.

And the juſtice, before whom he is brought, ſhall iſſue his warrant to the collector of the land tax, of the pariſh or townſhip where ſuch deſerter ſhall be apprehended, for paying out of the land tax money by him collected or to be collected, to the hands of him who ſhall apprehend, or cauſe to be apprehended, ſuch deſerter, the ſum of 20 *s.* the ſame to be allowed on his account. *ſ.* 50.

And if any perſon ſhall knowingly harbour or aſſiſt any deſerter, he ſhall forfeit 5 *l.* and if any perſon ſhall knowingly buy or exchange or otherwiſe receive any arms, cloaths, or furniture, belonging to the king, from any ſoldier or deſerter, or change the colour thereof, he ſhall forfeit 5 *l.* and on conviction by the oath of one witneſs, before one juſtice, the ſaid penalties ſhall be levied by diſtreſs; half the firſt penalty to be to the informer, by whoſe means ſuch deſerter ſhall be apprehended; and half the laſt penalty, to the informer; and half of both, to the officer to whom the deſerter did belong: and if ſuch perſon have not ſufficient, or ſhall not pay the penalty in four days, the juſtice ſhall commit him to gaol for three months, or cauſe him to be publickly whipped. *ſ.* 51.

And by the 1 *G. ſt.* 2. *c.* 47. If any perſon (other than inliſted ſoldiers againſt whom ſufficient remedy is already provided) ſhall perſuade any ſoldier to deſert, he ſhall on conviction in ſix months forfeit 40 *l.* to the king, or to any other who ſhall ſue for the ſame in any court at *Weſtminſter*; and if he ſhall not have goods worth 40 *l.* or from the circumſtances of the crime it ſhall be thought proper, the

court may award the offender to priſon not exceeding ſix months, and to ſtand in the pillory one hour.

XIII. Setting up trades after their diſcharge.

All officers, mariners, and ſoldiers who have been employed in his majeſty's ſervice, and not deſerted, may ſet up and exerciſe ſuch trades as they are apt for, in any town or place within *Great Britain* or *Ireland*; and if they ſhall be ſued thereupon, they ſhall have double coſts. 22 *G.* 2. *c.* 44.

XIV. Maintenance after their diſcharge.

By the 43 *El. c.* 3. Every pariſh ſhall be charged with a weekly ſum, towards the relief of ſick, hurt, and maimed ſoldiers and mariners, as the juſtices in ſeſſions ſhall appoint; ſo as no pariſh be rated above 10 *d.* nor under 2 *d.* weekly; and ſo as the total ſum in any county where there ſhall be above 50 pariſhes, do not exceed 6 *d.* for every pariſh.

But as this is left to the diſcretion of the juſtices, this is not uſually done; but they are left to be provided for by the particular pariſhes whereunto they do belong, or to the proviſions of the royal hoſpitals of *Greenwich* or *Chelſea* reſpectively.

With regard to the out-penſioners of *Chelſea* hoſpital, it is required by the ſtatute of the 28 *G.* 2. *c.* 1. that the juſtices of the peace ſhall take affidavits of their being alive (or of the time of their deaths reſpectively) half-yearly, without fee. *ſ.* 2.

XV. Probate of their wills.

The probate of the will, or letters of adminiſtration of any common ſoldier or ſeaman, who ſhall be ſlain or die in the ſervice, ſhall be exempted from the ſtamp duties, a certificate being produced from the captain under whom he ſerved at the time of his death, and oath made of the truth thereof, before the proper judge or officer, for which oath no fee ſhall be taken. 5 *W. c.* 21. *ſ.* 6.

Note, there is an act of the 30 *G.* 2. *c.* 11. for one year, of ſomewhat the like import with the annual acts againſt mutiny and deſertion, for the regulation of the marine forces whilſt on ſhore under the direction of the admiralty.

Alſo

Alſo, there is another act, of this preſent year, *viz.* the 30 *G.* 2. *c.* 2. to provide quarters for the foreign troops then in *England.*

And by another act of the ſame ſeſſion, 30 *G.* 2. *c.* 9. no perſon, during the preſent war with *France*, ſhall export from any of the *Britiſh* colonies in *America*, any corn, grain, meal, malt, flour, bread, biſcuit, ſtarch, beef, pork, bacon, or other ſort of victual; on pain that the ſame ſhall be forfeited, and alſo the ſhip and furniture, and every offender therein ſhall likewiſe forfeit 20 *s.* a buſhel of the corn, or grain, meal, malt, or flour, and 12 *d.* a pound for ſuch bread, biſcuit, ſtarch, beef, pork, bacon, or other victual; and the maſter and mariners offending ſhall be impriſoned three months.

And the officers of the cuſtoms may ſeize the ſame.

But the ſame may be carried from one colony to another, and may be exported to *Great Britain* or *Ireland*, with proper cocquets, and ſecurity given.

Officers granting falſe certificates of landing the ſame, ſhall forfeit 200 *l.* and their office; and perſons counterfeiting ſuch certificates ſhall forfeit 200 *l:* half to the king, and half to him that ſhall ſue (for offences committed in *England)* in any of the courts of record at *Weſtminſter*, at the aſſizes, or by information at the ſeſſions of the county or place where the offence ſhall be committed.

But this ſhall not extend to goods cleared out before *Mar.* 25, 1757.

Nor to fiſh, or roots.

And provided alſo, that rice may be exported to any part of *Europe*, ſouth of cape *Finiſterre.*

And the king by his proclamation, by order in council, may at any time during the continuance of this act, permit ſuch exportation as he ſhall judge it expedient.

Spirituous liquors. See **Exciſe.**

Squibs. See **Fireworks.**

Stabbing. See **Homicide.**

Stamps.

Statutes.

1. THE ſtatutes relating to theſe duties are

5 *W.* *c.* 21.	10 *An.* *c.* 26.
6 & 7 *W.* *c.* 12.	12 *An.* *ſt.* 1. *c.* 2.
9 & 10 *W.* *c.* 25.	12 *An.* *ſt.* 2. *c.* 9.
9 & 10 *W.* *c.* 44.	5 *G.* *c.* 19.
1 *An.* *ſt.* 2. *c.* 22.	6 *G.* *c.* 21.
8 *An.* *c.* 9.	11 *G.* *c.* 8.
9 *An.* *c.* 23.	16 *G.* 2. *c.* 26.
10 *An.* *c.* 19.	30 *G.* 2. *c.* 19.

Power of the juſtices in regard to theſe duties.

2. In one of which ſtatutes *(viz.* 10 *An.* *c.* 19.*)* there is a clauſe which brings all the reſt within the juriſdiction of the juſtices of the peace, and almoſt the whole law relating to this title; and is as follows:

Two juſtices of the peace reſiding near the place, where any pecuniary forfeitures not exceeding twenty pounds on any act touching any the duties under the management of the commiſſioners of the duties on ſtamped vellum, parchment, and paper, ſhall be incurred, or any offence againſt any of the ſame acts ſhall be committed in any wiſe relating to the ſame duties, by which any ſum of money only may be forfeited, may hear and determine the ſame; who ſhall on information or complaint, within a year after ſeizure made or offence committed, ſummon the party accuſed, and witneſſes; and may iſſue warrants for levying the penalties by diſtreſs and ſale, if not redeemed in ſix days. 10 *An.* *c.* 19. *ſ.* 172.

And the ſaid juſtices where they ſee cauſe, may mitigate the penalties; the charges being firſt allowed: and ſo as they reduce not the penalty to leſs than double duty, over and above the ſaid charges. *ſ.* 173.

And no certiorari ſhall ſuperſede the proceedings of the ſaid juſtices. *ſ.* 174.

And it is generally provided by the ſeveral act, that the ſaid forfeitures ſhall be diſtributed, half to the king, and half to him that ſhall ſue.

The ſeveral ſtamp duties.

3. The ſaid duties, when brought together from the ſeveral acts, ſeem to be as followeth;

	By 5 *W.* *c.* 21.	By 9 & 10 *W.* *c.* 25	By 12 *A.* *ſt.* 2. *c.* 9.
(1) For every ſkin and piece of vellum or parchment, or ſheet of paper, on which ſhall be written any grant, or letters patents under the great ſeal, or the ſeal of the dutchy of *Lancaſter*, or of any honour, dignity, promotion, franchiſe,			

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
chiſe, liberty or privilege, or exemplifications of the ſame (commiſſions of rebellion in proceſs, and charity briefs excepted) ſhall be paid —— ——	40*s.*	40*s.*	40*s.*
(2) Grant from the king of any ſum above 100 *l.* which ſhall paſs the great ſeal or privy ſeal —— ——	40*s.*	40*s.*	40*s.*
(3) Grant of any office above 50 *l.* a year —— —— ——	40*s.*	40*s.*	40*s.*
(4) Pardon of any crime or forfeiture, warrant of reprieve or relaxation from any fine, corporal puniſhment, or other forfeiture (general circuit or *Newgate* pardon excepted) ——	40*s.*	40*s.*	40*s.*
(5) Diſpenſation to hold two livings, or any diſpenſation or faculty from the archbiſhop of *Canterbury*, or maſter of the faculties —— ——	40*s.*	40*s.*	40*s.*
(6) Admittance of a fellow of the college of phyſicians, or of any attorney, clerk, advocate, proctor, notary, or other officer in any court whatſoever (except annual officers in corporations or inferior courts, whoſe office is under 10 *l.* a year, in ſalaries, fees, or other perquiſites) ——	40*s.*	40*s.*	40*s.*
(7) Appeal from the court of admiralty, arches, or the prerogative courts —— ——	40*s.*	40*s.*	40*s.*
(8) Grant of lands in fee, leaſe for years, or other grant or profit (not herein particularly charged) under the great ſeal, or privy ſeal, or ſeal of the exchequer or dutchy of *Lancaſter* ——	40*s.*	40*s.*	
(9) Preſentation or donation under the great ſeal, collation, or any preſentation or donation by any patron to any ſpiritual promotion of 10 *l.* a year in the king's books —— ——	40*s.*	40*s.*	
(10) Letters patents for charity briefs —— —— —— ——	40*s.*		
(11) General circuit or *Newgate* pardon —— —— ——	40*s.*		

(12) Regiſter,

	5 *W.* c. 21.	9 & 10 *W.* c. 25.	12 *A.* *ſt.* 2. c. 9.
(12) Regiſter, entry, teſtimonial, certificate of a degree in the univerſities or inns of court (except the regiſter or entry of a bachelor of arts) ——	40*s.*		
(13) Inſtitution, or licence, that ſhall paſs the ſeal of any biſhop, chancellor, or other ordinary, or any eccleſiaſtical court (except licences to ſchoolmaſters and tutors) —— ——	5*s.*	5*s.*	5*s.*
(14) Letters of mart —— ——	5*s.*	5*s.*	5*s.*
(15) Exemplification that ſhall paſs the ſeal of any court —— ——	5*s.*	5*s.*	
(16) Licence to ſchoolmaſters and tutors —— —— ——	5*s.*	5*s.*	
(17) Writ of error, certiorari, or appeal (except to the delegates) ——	5*s.*	5*s.*	
(18) *Significavit pro corporis deliberatione* —— —— ——	5*s.*	5*s.*	
(19) Sentence in the admiral's court, or cinque ports, or any attachment out of the ſaid courts, or relaxation of the attachment —— ——	5*s.*	5*s.*	
(20) Probate of a will, or letters of adminiſtration for an eſtate above 20*l.* value (except of common ſeamen or ſoldiers ſlain or dead in the ſervice) —— —— ——	5*s.*	5*s.*	
(21) Recognizance, ſtatute ſtaple, or ſtatute merchant —— ——	5*s.*	5*s.*	
(22) Conveyance, ſurrender of grants or offices, releaſe, or other deed inrolled of record in any court at *Weſtminſter*, or any court of record, or by any *cuſtos rotulorum*, or clerk of the peace —— —— ——	5*s.*	5*s.*	
(23) Writ of covenant for levying of fines —— —— ——	5*s.*		
(24) Writ of entry for ſuffering a common recovery —— ——	5*s.*		
(25) Licence for, or certificate of marriage (except the certificate of the marriage of a ſeaman's widow) ——	5*s.*		
(26) Writ of *habeas corpus* ——	5*s.*		

(27) Bene-

	5 *W.* 9 & 12 *A.* c. 21.	10 *W.* *ſt.* 2. c. 25.	*c.* 9.
(27) Beneficial warrant or order under the king's ſign manual (except for the navy, army, and ordnance) ——	2*s.*6*d.*	2*s.*6*d.*	2*s.*6*d.*
(28) Record of *Niſi Prius* or *Poſtea*	2*s.*6*d.*	2*s.*6*d.*	
(29) Judgment ſigned by the maſter of any office, or his deputy or ſecondary, or by any prothonotary, or his ſecondary, deputy, or clerk, or other officer in the courts at *Weſtminſter* —— —— ——	2*s.*6*d.*	2*s.*6*d.*	
(30) Commiſſion iſſuing out of an eccleſiaſtical court, not otherwiſe particularly charged —— ——	2*s.*6*d.*	2*s.*6*d.*	
(31) Warrant, monition, or perſonal decree in any court of admiralty or the cinque ports —— ——	2*s.*6*d.*	2*s.*6*d.*	
(32) Transfer of ſtock in any company (over and above the duty of 2*s.* 3*d.* by the 10 *An.* *c.* 19. and other duties) —— —— ——			4*s.* 6*d.*
(33) Special bail in any court, and appearance thereon —— ——	1*s.*	1*s.*	
(34) Bill, anſwer, replication, rejoinder, interrogatories, depoſitions taken by commiſſion, or pleadings in any court of equity —— ——	1*s.*	1*s.*	
(35) Admiſſion into any corporation or company, matriculation in the univerſities, admiſſion into the inns of court —— —— ——	1*s.*	1*s.*	
(36) Indenture (except for pariſh apprentices) leaſe, or deed poll, not otherwiſe charged;			
Charter party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt, procuration, letter of attorney, or any other notarial act —— ——	6 *d.*		
Indenture (except for pariſh apprentices) leaſe or deed poll, not otherwiſe charged;			
Charter party, policy of aſſurance, paſſport, bond, releaſe, contract, or other obligatory inſtrument, proteſt,			

procuration,

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
procuration, letter of attorney, or any other notarial act —— ——			6 *d.*
Indenture, leaſe, bond, or any deed not otherwiſe charged (except bail bonds and aſſignments thereof, and except indentures of pariſh apprentices)			6 *d.*

Note; The above treble ſix penny inſtruments, being expreſſed with ſome confuſion, becauſe the ſame words which are in the 5 *W.* and 9 & 10 *W.* are not repeated in the 12 *An.* it is thought neceſſary to inſert them as they ſtand in the ſeveral acts.

(And moreover, by the 30 *G.* 2. *c.* 19. for every inſtrument ſo charged with a ſix penny ſtamp by the ſaid ſtatute of the 12 *An.* there ſhall be paid over and above all other duties, 1 *s.*

And by the 10 *An.* *c.* 26. for a policy of aſſurance, if it be within the bills of mortality, there ſhall be further paid 2 *s.* 4 *d.*)

(37) Decree or diſmiſſion in chancery, or other court of equity ——			6 *d.* 6 *d.*
(38) Affidavit (except for burying in woollen, and except before officers of the cuſtoms, or juſtices of the peace, and commiſſioners for levying any aids or duties) —— — ——			6 *d.* 6 *d.*
(39) Copy of ſuch affidavit to be read or filed in any court ——			6 *d.* 6 *d.*

(40) Original writ (except on which a *capias* iſſues) *ſubpœna*, bill of *Middleſex*, *latitat*, writ of *capias*, *quo minus*, *dedimus poteſtatem*, to take anſwers, examine witneſſes, or appoint guardians, and any other writ, proceſs, or mandate iſſuing out of any court holding plea, where the debt or damage amounts to 40 *s.* (except writs of covenant for levying of fines, writs

of

	5 *W.* *c.* 21.	9 & 10 *W.* *c.* 25.	12 *A.* *ſt.* 2. *c.* 9.
of entry for common recoveries, and writs of *habeas corpus)* ———	6*d.*	6*d.*	
(41) Entry of an action in the courts of corporations, and other courts, out of which no writ, proceſs, or mandate iſſues, holding plea, where the debt or damage amounts to 40*s.* ———	6*d.*	6*d.*	
(42) Common bail in any court, and appearance thereon ———	6*d.*	6*d.*	
(43) Rule or order in any court at *Weſtminſter* ——— ———	6*d.*	6*d.*	
(44) Copy of ſuch rule or order, or of any other record or proceedings in the ſaid courts, not otherwiſe charged	6*d.*	6*d.*	
(45) Citation or monition in an eccleſiaſtical court, libel, allegation, depoſition, anſwer, ſentence, or final decree, inventory, or any copies of them —— —— ——	6*d.*	6*d.*	
(46) Indenture of pariſh apprentices ——— ——— ——	6*d.*		
(47) Declaration, plea, replication, rejoinder, demurrer, or other pleadings in any court of law —— ———	1*d.*	1*d.*	
(48) Copy thereof — ———	1*d.*	1*d.*	
(49) Depoſitions in chancery, or other court of equity (except the paper draughts of depoſitions taken by commiſſions before they are ingroſſed) not before charged; copy of any bill, anſwer, plea, demurrer, replication, rejoinder, interrogatories, depoſitions, or other proceedings in any court of equity —— —— ——	1*d.*	1*d.*	
(50) Copy of a will —— ——	1*d.*	1*d.*	

(Furthermore, beſides the duties impoſed by the three acts abovementioned, there are other duties by ſeveral other acts, as follows:)

(51) For every certificate or debenture for any drawback of cuſtoms, 8*d.* by 9 *An.* *c.* 23.

(52) Bill of lading ſigned for goods to be exported, 4*d.* by 9 *An.* *c.* 23.

(53) Wine

(53) Wine licence, 4*s.* by 9 *An.* *c.* 23. And by the 30 *G.* 2. *c.* 19. a further duty of 5*l.* for perſons not having either ale or brandy licence; of 4*l.* for perſons having an ale licence, and no brandy licence; and of 40*s.* for perſons having both ale and brandy licence.

(54) Licence for retailing beer, ale, or other exciſable liquors, 1*s.* by 9 *An.* *c.* 23. and further, by the 29 *G.* 2. *c.* 12. 20*s.*

(55) Surrender of, or admittance to a copyhold, or any grant or leaſe by copy of court roll, or any other copy of the court roll of any honour or manor (except the original ſurrender to the uſe of a will, and the court roll or book wherein the proceedings of the court are entred), 2*s.* 3*d.* by 10 *An.* *c.* 19.

But this ſhall not charge any copy of a ſurrender or admittance to a cuſtom right or tenant right eſtate, not being copyhold. 12. *An. ſt.* 1. *c.* 2. *ſ.* 49.

(56) By the 8 *An.* *c.* 9. Over and above the ſtamp duties upon the indenture, there ſhall be paid by the maſter, 6*d.* for every 20*s.* of every ſum of 50*l.* or under; and the duty of 1*s.* for every 20*s.* of every ſum above 50*l.* which ſhall be given or contracted for, in relation to any clerk, apprentice, or ſervant (except pariſh apprentices), and proportionably for greater or leſſer ſums.

Writings exempted from ſtamps.

4. But none of theſe acts ſhall charge any bills of exchange, accounts, bills of parcels, bills of fees, or any bills or notes (not ſealed) for payment of money at ſight, or on demand, or at the end of certain days of payment. 5 *W.* *c.* 21. *ſ.* 5.

Nor any warrant made by, or recognizance taken before juſtices of the peace. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor any warrants or inſtruments ſigned by the chief juſtices in eyre, or by any warden, lieutenant, or other officer of the king's foreſts or chaſes. 10 *An.* *c.* 26. *ſ.* 74.

Nor any proceedings of a court martial, which relate to the trial of any common ſoldier. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor any orders, decrees, or proceedings before commiſſioners of the ſewers. 6 & 7 *W.* *c.* 12. *ſ.* 2.

Nor in the court of ſtannaries. *id.*

Likewiſe perſons admitted to ſue or defend *in forma pauperis* ſhall not be liable to the ſtamp duties. 5 *W.* *c.* 21. *ſ.* 14.

Inſtead of ſeveral ſtamps, there may be one general ſtamp for the whole.

5. And to prevent the multiplication of ſtamps, upon ſuch pieces of vellum or parchment, or ſheets or pieces of paper, on which ſeveral duties are by ſeveral acts impoſed; it ſhall be lawful for the commiſſioners, inſtead of the diſtinct ſtamps directed by the ſeveral acts to be provided,

vided, to denote the ſeveral duties charged thereon, to cauſe one ſtamp to be provided to denote the ſaid ſeveral duties. 30 *G.* 2. *c.* 19. *ſ.* 18.

6. For the management of the ſtamp duties, the king may appoint commiſſioners; who ſhall ſubſtitute inferior officers. 5 *W.* *c.* 21. *ſ.* 7. 9 & 10 *W.* *c.* 25. *ſ.* 48. Officers for the ſtamp duties.

And with regard to the duties on the ſeveral acts before the 8 *An.* the ſaid officers, before they ſhall act, ſhall take an oath for the due execution of their office, before one or more of the commiſſioners; and by the ſaid act of the 8 *An.* and the ſubſequent acts, they may take the ſaid oath, with reſpect to the duties on thoſe acts, before one or more of the commiſſioners, or a juſtice of the peace.

7. The commiſſioners of the treaſury ſhall once a year at leaſt ſet the prices of ſtamped parchment and paper; and the commiſſioners of the ſtamp duties ſhall (beſides the ſtamps abovementioned) ſtamp the ſaid price upon every piece of parchment and paper. 6 & 7 *W.* *c.* 12. *ſ.* 9. Price of the paper to be ſtamped.

8. By the ſeveral acts, the commiſſioners ſhall make an allowance for prompt payment, to perſons who ſhall bring parchment or paper to be ſtamped, or buy the ſame of them ſo ſtamped, the duty whereof ſhall amount to 10 *l.* or upwards, at any one time. Allowance on prompt payment.

9. If any perſon ſhall write on any paper or parchment, before it be duly ſtamped as by the 5 *W.* he ſhall forfeit 5 *l.* (And by the 9 & 10 *W.* 5 *l.* more) And an officer offending, ſhall over and above forfeit his office. And an attorney offending ſhall be diſabled to practiſe. 5 *W.* *c.* 21. *ſ.* 11. Penalty for writing before ſtamped.

And if any inſtrument ſhall be written by any perſon (not being a known clerk or officer in reſpect of his office intitled to write the ſame) on paper or parchment not duly ſtamped, there ſhall be paid over and above the duty the ſum of 5 *l.* (and by the 10 & 11 *W.* 5 *l.* more); and the inſtrument ſhall not be given in evidence in any court, until both the duty and the ſaid ſum ſhall be paid, and a receipt produced for the ſame, under the hand of ſome officer appointed to receive the duties, and until the ſame ſhall be ſtamped. 5 *W.* *c.* 21. *ſ.* 11.

And by the 9 *An.* *c.* 23. If any officer of the cuſtoms ſhall ſign any debenture not ſtamped, or if any other perſon ſhall write any debenture, bill of lading, or licence by that act charged with the ſtamp duties, or ſign ſuch bill of lading; he ſhall forfeit 10 *l.* with coſts: and an officer of the cuſtoms offending ſhall moreover forfeit his office. And there ſhall be paid for the ſame, over and above the duties,

5 *l.* to the king; and the inſtrument ſhall not be available till that be done.

And by the 10 *An. c.* 19. If any the matters required to be ſtamped by that act, ſhall be ingroſſed on paper not ſtamped, there ſhall be paid for the ſame (over and above the duties) 5 *l.* in like manner.

M. 13 *G. K.* and *Reeks.* Upon a trial at bar, on an information in nature of a *quo warranto* for the office of burgeſs of *Chriſt Church*, the admiſſion of the defendant was produced, and it appeared to be a parchment that had only one ſtamp, and yet had five admiſſions entred upon it. And in order to make it good, they had annexed four other parchments, each of which was ſtamped. And the court held, that would not make it good; and that the proper way would have been, to have paid the four penalties, and to have had four new ſtamps on the firſt parchment. And for want of this there was a verdict againſt this and the other four defendants. *Str.* 716.

Clerk not entring inſtruments charged with the ſtamp duties.

10. And to prevent frauds, if any clerk or other officer ſhall neglect to enter or file any action, plaint, bill, appearance, admiſſion, or other thing in reſpect whereof any duty is payable, for four months; or ſhall not file the ſame before any ſubſequent proceeding ſhall be entred; or ſhall file any ſuch ſubſequent proceeding before the other ſhall have been filed as aforeſaid; he ſhall forfeit 20 *l.* Except where judgment is entred by confeſſion. 1 *An. ſt.* 2. *c.* 22. *ſ.* 1.

Writing to be near the ſtamp.

11. And the writing ſhall be either upon, or as near as conveniently may be to the ſtamp; on pain of 10 *l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 5.

The ſame ſtamp not to ſerve twice.

12. If any perſon ſhall write any thing, in reſpect whereof the ſtamp duties are payable, on any piece of paper or parchment, whereon there ſhall have been before any writing in reſpect whereof any duty was payable, before the ſame hath been again ſtamped; or ſhall eraſe or ſcrape out any name, ſum, date, or other thing, or fraudulently take off any ſtamp, with intent to uſe it in any other thing in reſpect whereof any duty is payable; he ſhall forfeit in like manner as for writing on paper unſtamped, and alſo 20 *l.* with full coſts. 1 *An. ſt.* 2. *c.* 22. *ſ.* 2, 3.

Counterfeiting the ſtamps.

13. By the ſeveral acts, if any perſon ſhall counterfeit the ſtamps, or cauſe or procure them to be counterfeited, or knowingly ſell any paper with ſuch counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy.

Stamp duty on almanacks.

14. For every ſheet almanack, for one year or leſs, printed on one ſide only, ſhall be paid 1 *d.* by the 9 *An. c.* 23. and 1 *d.* more by the 30 *G.* 2. *c.* 19.

For

For every other almanack for one year, 2*d.* by the 9 *An. c.* 23. and 2*d.* more by the 30 *G.* 2. *c.* 19.

And if for more than one year, then 2*d.* a year, by the 9 *An. c.* 23. but ſo as not to charge any almanack for more than if it were made for three years only. *ſ.* 53. And by the 30 *G.* 2. *c.* 19. a further duty is laid upon every ſuch almanack of 2*d.* for every ſuch year.

And all books and pamphlets, ſerving chiefly to the purpoſe of an almanack, ſhall be charged as almanacks. 10 *An. c.* 19. *ſ.* 175.

But where an almanack contains more than one ſheet, one ſheet only need to be ſtamped. 9 *An. c.* 23. *ſ.* 26.

And if any perſon ſhall expoſe to ſale any almanack unſtamped, he ſhall be puniſhed as hawkers of unſtamped news papers by the 16 *G.* 2. *c.* 26. (hereafter following), and ſhall have the ſame reward for apprehending the offender. 30 *G.* 2. *c.* 19. *ſ.* 26.

15. By the 11 *G. c.* 8. for every journal, mercury, or other publick news paper, ſhall be paid 1*d.* a ſheet, and ½*d.* for every half ſheet. And by the 30 *G.* 2. *c.* 19. for every news paper whether on half a ſheet or leſs or more, and not exceeding one ſheet, ½*d.* more. Duty on news papers and pamphlets.

For every pamphlet contained in half a ſheet of paper, ½*d.* 10 *An. c.* 19. *ſ.* 101.

Pamphlet larger than half a ſheet, not exceeding a whole ſheet, for every printed copy thereof, 1*d. id.*

Pamphlet above one ſheet, and not exceeding ſix ſheets in *octavo* or a leſſer page, or not exceeding 12 ſheets in *quarto*, or 20 ſheets in *folio*, for every ſheet which ſhall be contained in one printed copy thereof, 2*s. id.*

But news papers printed on a ſheet and an half of paper, ſhall not pay as pamphlets only 3*s.* for each impreſſion. 11 *G. c.* 8. *ſ.* 13.

(But nothing herein ſhall charge any act of parliament, proclamation, order of council, form of prayer, or other act of ſtate, printed votes, ſchool books, books of devotion, daily accounts of imports and exports, nor weekly bills of mortality. 10 *An. c.* 19. *ſ.* 102.)

And if any perſon ſhall write, print, or expoſe to ſale any ſuch pamphlet or news paper (the ſaid pamphlet exceeding one ſheet only excepted) before the paper ſhall be ſtamped; he ſhall forfeit 10*l.* with full coſts. 10 *An. c.* 19. *ſ.* 105.

And a printed copy of every pamphlet containing more than one ſheet, ſhall (within the bills of mortality) in ſix days after printing be brought to the head office, and the title, number of ſheets, and duty ſhall be entred in a book,

and the duty thereupon paid to the receiver general, who ſhall give a receipt for the ſame on ſuch printed copy, or the ſame ſhall be ſtamped to denote the payment: Without the bills, it ſhall be brought in 14 days to ſome head collector of the ſtamp duties, who ſhall enter the title, number of ſheets, and duty, which duty ſhall be thereupon paid to the collector, who ſhall give a receipt for the ſame on ſuch printed copy. 10 *An. c.* 19. *ſ.* 111.

And if any ſuch pamphlet containing more than one ſheet, ſhall be printed or publiſhed, and the duty not paid, and title regiſtred, and one copy ſtamped where required ſo to be, within the times above limited; the author, printer, and publiſher, and all other perſons concerned, ſhall loſe all property therein, and in every copy thereof, and ſhall alſo forfeit 20 *l.* with full coſts. *id.* 112.

And no perſon ſhall expoſe to ſale any ſuch pamphlet, without the name and place of abode of ſome known perſon, by or for whom it was printed or publiſhed, written or printed thereon; on pain of 20 *l.* *id. ſ.* 113.

And pamphlets unſold ſhall be cancelled by the commiſſioners, and the like number of other ſheets ſtamped *gratis* ſhall be changed for them. *id. ſ.* 114.

And two juſtices may hear and determine offences in relation to pamphlets or news papers on this act, in like manner as above is mentioned; and mitigate the penalty, ſo as they do not reduce it lower than one fourth part, over and above the coſts; and where goods of the offender cannot be found, may commit him to priſon till paid. *ſ.* 120.

And by the 16 *G.* 2. *c.* 26. If any perſon ſhall ſell, or expoſe to ſale, any news paper, or any book, pamphlet, or paper, deemed to be a news paper, unſtamped; any juſtice of the peace may commit him (being convicted before him, by confeſſion, or oath of one witneſs) to the houſe of correction for any time not exceeding three months: And any perſon may apprehend and carry him before ſuch juſtice: And on producing a certificate of ſuch conviction, under the hand of ſuch juſtice (which he ſhall give without fee), he ſhall have a reward of 20*s.* to be paid by the receiver general of the ſtamp duties. *ſ.* 5.

Duty on advertiſements in news papers.

16. For every advertiſement in the gazette, or other printed paper, publiſhed weekly or oftner, ſhall be paid 1*s.* by the 10 *An. c.* 19. *ſ.* 101. and 1*s.* more by the 30 *G.* 2. *c.* 19. *ſ.* 1.

And for every advertiſement contained in or publiſhed with any paper or pamphlet, yearly, monthly, or at any interval of time exceeding one week, 2*s.* 30 *G.* 2. *c.* 19. *ſ.* 1.

And

And the ſaid duty on advertiſements ſhall be paid, within 30 days after the printing or publication, to the receiver general or his deputy, within the bills; and elſewhere to the next adjacent head officer: on pain of treble duty with full coſts. *ſ.* 118.

But nothing herein ſhall extend to any ſingle advertiſement printed by it ſelf. *ſ.* 102.

17. Laſt of all, it is thought proper to inſert here the regulations concerning the duties on cards and dice; they being likewiſe under the management of the commiſſioners of the ſtamp duties; and not of ſmall conſideration, ſince a man may be guilty of offences even with reſpect to theſe, for which he ſhall loſe his life. Duty on cards and dice.

(1) By the 10 *An.* *c.* 19. No playing cards or dice ſhall be imported. *ſ.* 167.

(2) For every pack of cards made in *Great Britain*, ſhall be paid 6*d.* 9 *An.* *c.* 23. and 6*d.* more, by the 29 *G.* 2. *c.* 13.

And for every pair of dice 5*s.* 9 *An.* *c.* 23. and 5*s.* more, by the 29 *G.* 2. *c.* 13.

(3) And all pieces of ivory, bone, or other matter made or uſed for any game or play, with any ſpots or other marks thereon, to denote any chance, ſhall be deemed dice. 10 *An.* *c.* 19. *ſ.* 168.

(4) All makers of cards or dice, before they begin to make them, ſhall give notice in writing of the houſe or place where they intend to make them, to the commiſſioners of the ſtamp duties, or their officer next adjacent, on pain of 50*l.* 9 *An.* *c.* 23. *ſ.* 41. And alſo all the cards, dice, materials, and utenſils ſhall be forfeited. 10 *An.* *c.* 19. *ſ.* 166.

(5) And the officers may enter any houſe or place, where cards or dice are made, ſold, or expoſed to ſale, or ſuſpected to be privately made, or into any publick gaming houſe, room, or place, and there ſearch and ſee what quantity of cards or dice ſhall be making, and whether they be ſtamped; and if the owner or occupier ſhall refuſe entrance or liberty of ſearch, he ſhall forfeit 10*l.* 10 *An.* *c.* 19. *ſ.* 169.

(6) And if the commiſſioners be informed, or have cauſe to ſuſpect, that any perſon makes cards or dice in a place not entred, on affidavit thereof by the informer before a juſtice of the peace declaring the grounds of his ſuſpicion; the officer may in the day time, and in the preſence of a conſtable, by warrant of ſuch juſtice break open the door, or any part of ſuch private place, and enter, and ſeize all ſuch cards, dice, tools, or materials; and if not replevied

in five days, they ſhall be forfeited and ſold. 6 *G. c.* 21. *ſ.* 59.

(7) And no materials begun to be wrought for cards or dice, ſhall be removed until they be compleatly made, or the duties paid; on pain of double duty. 10 *An. c.* 19. *ſ.* 166.

(8) And no maker of cards or dice ſhall remove the ſame from the place of making, until ſuch mark upon the dice, and ſuch ſeal upon the paper and thread incloſing every pack of cards ſhall be put thereon, as the commiſſioners ſhall appoint; on pain of forfeiting the ſame, and treble value. 9 *An. c.* 23. *ſ.* 41.

(9) And every maker of cards and dice, who ſhall endeavour to defraud the king by any concealment, ſhall forfeit 20*l.* 9 *An. c.* 23. *ſ.* 43.

(10) The makers of cards and dice ſhall once in every 28 days make entry upon oath with the proper officer, of all the cards and dice by them made within the ſaid time; on pain of 20*l.* 9 *An. c.* 23. *ſ.* 42.

And the card maker ſhall be obliged at the reſpective times of entring, to give bond with ſurety of treble the duty, for payment of the duty in ſix weeks 6 *G. c.* 21. *ſ.* 57.

(11) And the maker of cards and dice ſhall once in every ſix weeks clear off the duties; on pain of double duty. 9 *An. c.* 23. *ſ.* 42.

And if the card maker ſhall on entry pay down the duty, he ſhall have the like allowance as for preſent payment of the ſtamp duties by the 1 *An. ſt.* 2. *c.* 22. (That is, he ſhall have an abatement after the rate of 6*l. per cent. per annum* for ſix months.) 6 *G. c.* 21. *ſ.* 58.

(12) And no cards or dice ſhall be expoſed to ſale, or uſed in play in any publick gaming houſe, unleſs the paper and thread incloſing the ſame ſhall have been reſpectively ſealed and ſtamped, and unleſs one of the cards of each pack ſhall be alſo ſtamped on the ſpotted ſide; on pain that every perſon who ſhall expoſe to ſale any ſuch cards or dice not ſtamped, ſhall forfeit for every ſuch pack, and for every one of ſuch dice, 5*l.* with coſts. 10 *An. c.* 19. *ſ.* 162.

(13) And by the 6 *G. c.* 21. if any perſon ſhall take off the ſtamp of playing cards (in order to put it on a new pack), or ſquare or new ſpot any dice which have been played with, or ſhall incloſe any pack of cards in an outſide paper which hath been uſed before, or ſhall ſell any cards not ſtamped and incloſed in paper and thread ſealed and ſtamped; he ſhall forfeit 10*l.* with full coſts. *ſ.* 55.

(14) And

(14) And if any perſon ſhall ſell or buy any cover or label, which hath before been uſed for denoting the duty payable upon cards, in order to be made uſe of for incloſing any pack or parcel of cards; he ſhall forfeit 20*l.* and if either the buyer or ſeller ſhall inform againſt the other, his evidence ſhall be admitted, and he ſhall be indemnified. 29 *G.* 2. *c.* 13. *ſ.* 8, 9.

(15) And if any perſon ſhall ſell any cards called waſte cards, unleſs before ſale he mark the back or plain ſide of every ſuch card, ſo as to render it unfit to be uſed in playing; he ſhall forfeit 20*l.* 29 *G.* 2. *c.* 13. *ſ.* 10.

(16) And if any perſon ſhall counterfeit the ſtamps on cards or dice, or knowingly ſell them with a counterfeit ſtamp; he ſhall be guilty of felony without benefit of clergy. 10 *An. c.* 19. *ſ.* 163. 29 *G.* 2. *c.* 13. *ſ.* 5.

(17) Nevertheleſs it ſhall be lawful to remove cards or dice from the place where they are made, without ſtamping or paying duty, provided that within a month after they are made, and before they be removed, bond of double the duty be given, that they ſhall be exported and not relanded. 10 *An. c.* 19. *ſ.* 170. 5 *G. c.* 19. *ſ.* 48.

(18) But cards intended for exportation ſhall before packing for exportation be incloſed in paper and thread, in packs or parcels, and be marked on the ſpotted ſide, in ſuch manner as the commiſſioners ſhall direct; and if any perſon ſhall ſell or expoſe to ſale to be uſed in *Great Britain*, or ſhall uſe or permit to be uſed in any publick gaming houſe any cards ſo marked as for exportation; he ſhall forfeit 20*l.* for every ſuch pack. 29 *G.* 2. *c.* 13. *ſ.* 6.

Star. See **Rent.**

Starch. See **Exciſe.**

Stock of the county. See **County rate.**

Stocks.

IT is ſaid, that every vill of common right, is bound to provide a pair of ſtocks. 2 *Haw.* 73.

And the conſtable by the common law, may confine offenders in the ſtocks, by way of ſecurity, but not by way of puniſhment.

But by divers ſtatutes, the ſtocks is alſo appointed for the puniſhment of offenders in ſundry caſes, after conviction.

Stock of companies.

IF any perſon ſhall forge or counterfeit any power or authority to transfer any ſhare of any capital ſtock of any company eſtabliſhed by act of parliament, or to receive the ſame, or ſhall forge or counterfeit the name of any proprietor, or perſon intitled to a dividend, or ſhall fraudulently demand, or endeavour to have any ſuch ſhare received by virtue of ſuch counterfeit inſtrument, or ſhall perſonate any proprietor of any ſuch ſhare of ſuch ſtock; he ſhall be guilty of felony without benefit of clergy. 8 *G. c.* 22. *ſ.* 1.

Stolen goods. See Search warrant, Reſtitution.

Stores.

Imbezilling to the value of 20*s.*

1. IF any perſon having the charge or cuſtody of any of the king's armour, ordnance, ammunition, ſhot, powder, or habiliments of war, or of any victuals provided for victualling the army, ſhall for lucre or gain, wittingly, adviſedly, and of purpoſe, to hinder his majeſty's ſervice, imbezil, purloin, or convey away the ſame to the value of 20*s.* or ſhall feloniouſly ſteal or imbezil any of his majeſty's ſails, cordage, or any other of his majeſty's naval ſtores, to the like value of 20*s.* he ſhall (on proſecution within a year) be adjudged guilty of felony without benefit of clergy. 31 *El. c.* 4. 22 *C.* 2. *c.* 5.

Under the value of 20*s.*

2. And any of the principal officers or commiſſioners of the navy, may iſſue warrants to ſearch for the ſame, and puniſh the offenders by fine not exceeding 20*s.* or impriſonment not exceeding one week, the value of the goods not exceeding 20*s.* and if the offence requires a higher puniſhment, may commit him till he find ſureties to appear in the exchequer, or other court where the king ſhall queſtion him for the ſame, within one year, on proceſs duly ſerved for that purpoſe on ſuch offender. 1 *G. ſt.* 2. *c.* 25. *ſ.* 3.

Counterfeiting a naval officer's hand.

3. And every perſon who ſhall counterfeit the hand of any officer of the navy to any paper whereby his majeſty's naval treaſure may be diſpoſed of, or knowingly produce the

the ſame, he may be bound over by the ſaid officers and commiſſioners, or any of them, until he find ſurety to appear at the next aſſizes or quarter ſeſſions, to be there proceeded againſt according to law. 1 *G. ſt.* 2. *c.* 25. *ſ.* 6.

4. No perſon, other than perſons authorized by contracting with his majeſty's officers, ſhall make any ſtores of war or naval ſtores with the king's mark, that is, cordage of 3 inches and upwards with a white thread laid the contrary way, or any ſmaller cordage with a twine in lieu of white thread laid the contrary way, or any canvaſs with a blue ſtreak in the middle, or any other ſtores with the broad arrow; on pain of forfeiting the ſame, and 200*l.* with coſts (on conviction at the aſſizes or ſeſſions, 17 *G.* 2. *c.* 40. *ſ.* 10, 11.) half to the king, and half to the informer. 9 & 10 *W. c.* 41. Making ſtores with the king's mark.

And ſuch perſon in whoſe cuſtody ſuch goods or ſtores ſo marked (or any timber, thick ſtuff, or plank, marked with the broad arrow, 9 *G. c.* 8. *ſ.* 3.) ſhall be found, ſhall forfeit the ſame and 200*l.* with coſts in like manner, and be impriſoned till paid, unleſs he ſhall upon trial produce a certificate from three principal officers of the navy, expreſſing the quantity, and on what occaſion he came by them. 9 & 10 *W. c.* 41.

But the judge or juſtices may mitigate the penalty as they ſhall ſee cauſe, and may commit the offender to gaol till payment, or may puniſh him corporally by cauſing him to be publickly whipped, or committed to ſome publick workhouſe to be kept to hard labour for 6 months or a leſs time. 9 *G. c.* 8. *ſ.* 4.

5. Imbezilling or purloining of armour, ſtores, naval proviſions, and other habiliments of war, are excepted out of the general pardon of the 20 *G.* 2. *c.* 52. Pardon.

Stray. See Eſtray.

Subornation. See Perjury.

Sunday. See Lord's day.

Surety for the peace.

OUT of the *Latin* word *pax*, the *Normans* formed their *paix*, and we (out of that) our *peace*. Lamb. 5.

Surety

Surety for the peace is the acknowledging a recognizance, or bond, to the king, taken by a competent judge of record, for the keeping the peace. *Dalt. c.* 116.

And this ſurety of the peace, every juſtice of the peace may take and command, by a twofold authority: 1. As a miniſter, commanded thereto by a higher authority: as when a writ of *ſupplicavit*, directed out of the chancery or king's bench, is delivered to him. 2. As a judge, and by virtue of his office, derived from his commiſſion. *Dalt. c.* 116.

Concerning which I will ſhew,

I. For what cauſe ſurety of the peace ſhall be granted.
II. At whoſe requeſt it ſhall be granted.
III. Againſt whom it ſhall be granted.
IV. In what manner it ſhall be granted.
V. How the peace warrant may be ſuperſeded.
VI. How the peace warrant ſhall be executed.
VII. What ought to be the form of a recognizance for the peace.
VIII. How ſuch recognizance ſhall be certified.
IX. How ſuch recognizance may be forfeited.
X. How the recognizance being forfeited ſhall be proceeded on.
XI. How ſuch recognizance may be diſcharged.

I. For what cauſe ſurety of the peace ſhall be granted.

1. By the commiſſion of the peace, one or more juſtices have power *to cauſe to come before them, all thoſe who to any of the king's people concerning their bodies, or the firing of their houſes, have uſed threats, to find ſufficient ſecurity for the peace or their good behaviour towards the king and his people; and if they ſhall refuſe to find ſuch ſecurity, to cauſe them in the king's priſons to be ſafely kept, until they ſhall find ſuch ſecurity.*

2. Upon which Mr. *Hawkins* obſerves, that it ſeemeth clear, that wherever a perſon has juſt cauſe to fear, that another will burn his houſe, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him ſuch miſchief, he may demand the ſurety of the peace againſt ſuch perſon, and that every juſtice of the peace

is

is bound to grant it, upon the party's giving him ſatisfaction upon oath, that he is actually under ſuch fear, and that he has juſt cauſe to be ſo, by reaſon of the other's having threatned to beat him, or lain in wait for that purpoſe; and that he doth not require it out of malice, or for vexation. 1 *Haw.* 127.

3. Alſo it ſeems the better opinion, that he who is threatned to be *impriſoned* by another, has a right to demand the ſurety of the peace; for every unlawful impriſonment is an aſſault and wrong to the perſon of a man. And the objection, that one wrongfully impriſoned may recover damages in an action, and therefore needs not the ſurety of the peace, is as ſtrong in the caſe of battery as impriſonment; and yet there is no doubt, but that one threatned to be beaten, may demand the ſurety of the peace. 1 *Haw.* 127.

4. But if the juſtice ſhall perceive that ſurety is demanded merely of malice, or for vexation only, without any juſt cauſe of fear, it ſeemeth he may ſafely deny it. As in common experience we find it, that where a perſon ſhall upon a juſt cauſe come and crave the peace againſt another, and hath it granted to him; when ſuch other perſon ſhall come before the juſtice, he likewiſe will crave the peace againſt the former, and will perhaps ſurmiſe ſome cauſe; but yet will nevertheleſs be content to ſurceaſe his ſuit and demand, ſo as the other will relinquiſh to have the peace againſt him: Here the juſtice ſhall do well not to be too forward in granting the peace thus required by the latter, but to perſuade him, and to ſhew him the danger of his oath which he is to take; but yet if he will not be perſuaded, but will take his oath, that he is in fear, where indeed he neither doth fear, nor hath cauſe to fear, this oath ſhall diſcharge the juſtice, and the fault ſhall remain on ſuch complainant. *Dalt. c.* 116.

5. Alſo, if a man will require the peace, becauſe he is *at variance*, or *in ſuit* with his neighbour, it ſhall not be granted. *Dalt. c.* 116.

6. Alſo, Mr. *Lambard* ſays, he takes it to be ſomewhat clear, that a juſtice may not by the commiſſion award a precept of the peace, in behalf of a man that will require it, becauſe he feareth that he will do harm to his *ſervants* or *cattle*. Lamb. 83.

And Mr. *Dalton* ſays, where a man is in fear that another will hurt his ſervants, or his cattle, or other goods, this ſurety of the peace ſhall not be granted by the juſtice. But in this caſe *Fitzherbert* ſaith, the party may have a ſpecial writ out of the chancery directed to the ſheriff, that he

he ſhall cauſe ſuch perſon to find ſurety, that he ſhall do no hurt or damage to the other man in his body, or to his ſervants or goods; and if he will not find ſurety, that then he ſhall arreſt and detain him in priſon until he ſhall find ſurety. *Dalt. c.* 116.

And the reaſon why a man may not have ſureties of the peace againſt another, for that he feareth he will do harm to his *ſervants*, ſeemeth to be, becauſe it ſhould be the *ſervant*'s fear in ſuch caſe, and not the *maſter*'s; and the ſervant's own oath before the juſtice is neceſſary. And as to his *goods*, it ſeemeth clear, that no ſureties of the peace ought to be granted in that caſe; for the recognizance of the peace when taken, is only that the party ſhall keep the peace towards the king and all his liege people.

But Mr. *Dalton* ſays, that if a man ſhall threaten to hurt his *wife*, or *child*, he thinks he may crave the peace at the juſtice's hands, by the words of the commiſſion, and that the juſtice ought to grant it. *Dalt. c.* 116.

7. Note alſo, the ſurety of the peace ſhall not be granted, but where there is a fear of ſome preſent or future danger, and not merely for a battery or treſpaſs that is paſt, or for any breach of the peace that is paſt; for this ſurety of the peace is only for the ſecurity of ſuch as are in fear: But the party wronged may puniſh the offender by indictment; and the juſtice, if he ſee cauſe, may bind over the affrayer. *Dalt. c.* 116. That is, he may bind him over to anſwer unto the indictment.

II. At whoſe requeſt it ſhall be granted.

1. As to this, Mr. *Hawkins* ſays, It ſeems to be agreed at this day, that all perſons whatſoever, under the king's protection, being of *ſane memory*, whether they be natural and good ſubjects, or *aliens*, or *excommunicate*, or attainted of *treaſon*, have a right to demand ſurety of the peace. And it is certain, a *wife* may demand it againſt her huſband threatning to beat her outrageouſly, and that a *huſband* alſo may have it againſt his wife. 1 *Haw.* 126. *Crom.* 118.

Upon which Maſter *Crompton* obſerveth, that if the wife in ſuch caſe cannot find ſureties, ſhe ſhall be committed; and ſo, ſays he, a man may be rid of a ſhrew. *Crom.* 118.

2. And Mr. *Dalton* ſays, an infant under the age of 14 years, may demand this ſurety, and it ſhall be granted him. *Dalt. c.* 117.

3. But as to a perſon of *non ſane memory*, Mr. *Dalton* ſays, this ſurety ſhall neither be granted againſt him nor

to him upon his own requeſt; but yet if there ſhall be cauſe, the juſtice ought to provide for his ſafety. *Dalt. c.* 117.

III. Againſt whom it ſhall be granted.

There ſeems to be no doubt, but that it ought, upon a juſt cauſe of complaint, to be granted by any juſtice of the peace, againſt any perſon whatſoever, under the degree of nobility, being of ſane memory, whether he be a magiſtrate or private perſon, and whether he be of full age, or under age. But infants and femes covert ought to find ſecurity by their friends, and not to be bound themſelves. And the ſafeſt way of proceeding againſt a *peer*, is by complaint to the court of chancery or king's bench. 1 *Haw.* 127.

IV. In what manner it ſhall be granted.

1. It ſeemeth certain, that if the perſon to be bound be in the preſence of the juſtice, he may be immediately committed, unleſs he offers ſureties; and from hence it follows *a fortiori*, that he may be commanded by word of mouth to find ſureties, and committed for his diſobedience: But it is ſaid, that if he be abſent, he cannot be committed without a warrant from ſome juſtice in order to find ſureties, and that ſuch warrant ought to be under ſeal, and to ſhew the cauſe for which it is granted, and at whoſe ſuit (that the party may provide his ſureties), and that it may be directed to any indifferent perſon. 1 *Haw.* 128.

2. The juſtice may make the warrant, to bring the party before himſelf or ſome other juſtice, or he may make it to bring the party before himſelf only; for he that maketh the warrant for the moſt part hath the beſt knowledge of the matter, and therefore he is the fitteſt to do juſtice in the caſe. 5 *Co.* 59.

3. As to the granting proceſs of the peace or good behaviour, out of the chancery or king's bench, it is enacted by the 21 *J. c.* 8. that it ſhall not be granted but upon motion in open court, and declaration in writing and upon oath, to be exhibited by the party deſiring ſuch proceſs, of the cauſes for which ſuch proceſs ſhall be granted; the motion and declaration to be mentioned on the back of the writ. And if it ſhall afterwards appear, that the cauſes are untrue, the court may order coſts to the party grieved, and commit the offender till paid.

V. How the peace warrant may be ſuperſeded.

1. It is ſaid, that if one who fears that the ſurety of the peace will be demanded againſt him, find ſureties before any juſtice of the ſame county, either before or after a warrant is iſſued againſt him, he may have a *ſuperſedeas* from ſuch juſtice, which ſhall diſcharge him from arreſt from any other juſtice, at the ſuit of the ſame party, for whoſe ſecurity he has given ſuch ſurety. 1 *Haw.* 129.

2. In which *ſuperſedeas* it is not neceſſary to name either the ſureties, or the ſums in which they are bound; but yet it is the better form to expreſs them both. *Dalt. c.* 118.

3. Alſo, it is ſaid, that an appearance upon a recognizance for the peace may be ſuperſeded, by finding ſureties in the chancery or king's bench, and purchaſing a writ teſtifying the ſame; but this practice having been often abuſed, it is enacted by the 21 *J. c.* 8. that no writs of *ſuperſedeas* ſhall be granted out of the chancery or king's bench, but upon motion in open court, and on ſuch ſufficient ſureties as ſhall appear on oath to the court, to be aſſeſſed in the ſubſidy book at 5*l.* lands, or 10*l.* goods, and unleſs it ſhall alſo firſt appear to the court, that the proceſs of the peace or good behaviour is proſecuted againſt him, deſiring ſuch *ſuperſedeas bona fide* by ſome party grieved in that court, out of which the *ſuperſedeas* is deſired to be awarded. 1 *Haw.* 129.

VI. How the peace warrant ſhall be executed.

1. It can be executed only by the perſons to whom it is directed, or ſome of them, unleſs it be directed to the ſheriff, who may either by parol, or by precept in writing, authorize an officer ſworn and known, to ſerve it, but cannot impower any other perſon without a precept in writing. 1 *Haw.* 128.

2. It ſeems generally agreed, that where a perſon authorized by warrant of a juſtice of the peace to compel a man who is ſheltred in an houſe, to find ſureties for the peace or good behaviour, is denied quietly to enter into it, he may juſtify breaking open the doors, in order to take him; but he muſt firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance. 2 *Haw.* 86.

3. If the warrant ſpecially direct that the party ſhall be brought before the juſtice who made it, the officer ought

not

not to carry him before any other; but if the warrant be general, to bring him before any juſtice of ſuch place, the officer has the election to bring him before what juſtice he pleaſeth, and may carry him to priſon for refuſing to find ſurety before ſuch juſtice. 1 *Haw.* 128.

4. And if the party is carried before another juſtice, and not before him who iſſued the warrant, ſuch other juſtice muſt take the ſurety, and bind him by recognizance in all points as the form of the precept doth require. And thereupon ſuch other juſtice, having ſo taken ſurety of the peace, may and ought upon requeſt, to make his *ſuperſedeas* to all officers, and to all other juſtices of the ſame county; and thereby the ſaid party ſhall be diſcharged from finding other ſurety, and from any other arreſt for the ſame cauſe. But by ſuch *ſuperſedeas*, the other juſtice cannot diſcharge the warrant of the firſt juſtice, until the party be bound indeed, nor give any other day to the party to appear. *Dalt. c.* 118.

5. If the warrant be in the common form, requiring the officer to cauſe the party complained of to come before the juſtice to find ſufficient ſurety, and if he ſhall refuſe ſo to do, to convey him immediately to priſon, without expecting any further warrant, until he ſhall willingly do the ſame, the officer who ſerves it, before he makes any arreſt, ought firſt to require the party to go with him, and find ſureties according to the purport of the warrant; but upon refuſal to do either, that is, either to go before the juſtice, or to find ſureties, he may carry him to the gaol by force of the ſame warrant, without more. 1 *Haw.* 128. *Dalt. c.* 118.

And yet the conſtable, or officer, may bring him in that caſe before the juſtice; and if he refuſes there to give ſureties, he may commit him without any farther warrant or *mittimus*. 2 *H. H.* 112.

Nevertheleſs, notwithſtanding theſe great authorities, it may not be convenient for the juſtice, to leave ſo much to the conſtable's judgment, as to determine what ſhall or ſhall not be deemed a refuſal to find ſuch ſureties; for that the conſtable is conſtituted a judge in ſuch caſe by no law. And much leſs doth it ſeem adviſable, to require in the warrant, as is uſual, that the conſtable ſhall carry the party to gaol, if he ſhall refuſe to find *ſufficient* ſureties; for it doth not appear, how the conſtable can any way be deemed a competent judge of that; for it is certain, that he cannot adminiſter an oath to ſuch ſureties, or others, whereby to inform himſelf of ſuch ſufficiency.

6. If

6. If the officer do arreſt the party, and do not carry him before the juſtice to find ſureties; or upon the refuſal of the party, if the officer ſhall arreſt him, and do not carry him to the gaol, in both theſe caſes the officer is puniſhable by the juſtices for this neglect, by indictment and fine at their ſeſſions: And alſo the party arreſted may have his action of falſe impriſonment for the arreſt; for where the officer doth not purſue the effect of his warrant, his warrant will not excuſe him of that which he hath done. *Dalt. c.* 118.

7. When the party cometh before the juſtice, he muſt offer ſureties, or elſe the juſtice may commit him; for the juſtice needeth not to demand ſurety of him. *Dalt. c.* 118, 169.

8. If the juſtice was deceived in the ſufficiency of the ſureties, he or any other juſtice may afterwards compel the party to find and put in other ſufficient ſureties, and may take a new recognizance for the ſame. *Dalt. c.* 116, 119.

9. But if the ſureties die, the party principal ſhall not be compelled to find new ſureties. *Dalt. c.* 119. Becauſe their executors or adminiſtrators are liable.

10. Alſo if a man, that was bound to keep the peace, hath broken his bond, the juſtices ought of diſcretion to bind him anew. *Lamb.* 78.

But not until he be thereof convicted by due courſe of law; for before conviction, he ſtandeth indifferent, whether he hath forfeited his recognizance or not. *Crom.* 125.

VII. What ought to be the form of a recognizance for the peace.

1. The recognizance which the juſtice takes for the keeping of the peace, is rather of congruity, than by any expreſs authority given either by the common law, or by ſtatute. *Dalt. c.* 168.

2. If it is taken in purſuance of a writ of *ſupplicavit*, it muſt be wholly governed by the directions of ſuch writ: But if it be taken before a juſtice, upon a complaint below, it ſeems that it may be regulated by the diſcretion of ſuch juſtice, both as to the number and ſufficiency of the ſureties, and the largeneſs of the ſum, and the continuance of the time for which the party ſhall be bound. And it hath been ſaid, that a recognizance to keep the peace as to any perſon, for a year, or for life, or without expreſſing any certain time (in which caſe it ſhall be intended for life),

or

or without fixing any time or place for the party's appearance, or without binding him to keep the peace againſt all the king's people in general, is good. 1 *Haw.* 129.

3. However it ſeems to be the ſafeſt way, to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the king and all his liege people, eſpecially as to the party, according to the common form of precedents. 1 *Haw.* 129.

VIII. How ſuch recognizance ſhall be certified.

If it be taken by force of a writ of *ſupplicavit*, it needs not be certified till the juſtice receive a writ of certiorari to that purpoſe. But if it be taken upon a complaint below, it muſt be certified, ſent, or brought to the next ſeſſions, by force of the ſtatute of the 3 *H.* 7. *c.* 1. that the party ſo bound may be called. 1 *Haw.* 130.

IX. How ſuch recognizance may be forfeited.

1. There are divers things which may be done againſt the peace, and divers offences for which an indictment againſt the peace will lie; and yet the committing or doing ſuch offence or act ſhall be no forfeiture of the recognizance for the peace: for that the act that ſhall cauſe a forfeiture of ſuch recognizance muſt be done or intended unto the *perſon* as is aforeſaid, or in terror of the people. Therefore to enter into lands, where he ought to bring his action; or to diſſeiſe another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's perſon, and without publick terror; or to do a treſpaſs in another man's corn or graſs; or to take away another man's goods wrongfully, ſo it be not from his perſon; or to ſteal another man's horſe, or other goods feloniouſly, being not from his perſon: All theſe, and the like, are breaches of the peace, and yet theſe will make no breach of this recognizance, nor breach of the peace within the meaning of the commiſſion of the peace. *Dalt. c.* 121.

2. More particularly; The recognizance is forfeited, if the party make default of appearance, and the ſame default ſhall be recorded. 3 *H.* 7. *c.* 1.

However, if the party have any excuſe for his not appearing, it ſeems that the ſeſſions is not bound peremptorily to record his default, but may equitably conſider of the reaſonableneſs of ſuch excuſe. 1 *Haw.* 130.

And Mr. *Dalton* ſays, in caſe of the ſickneſs of the party, ſo that he cannot appear, he has known that the juſtices upon due proof thereof have forborn to certify or record ſuch forfeiture or default; and that they have taken ſureties for the peace of ſome friends of his preſent in court, until the next ſeſſions; for that the principal intent of the recognizance was but the preſervation of the peace. But he queries how this is warrantable by their oath. *Dalt. c.* 120.

3. Alſo, there is no doubt, but that it may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others thro' his procurement; as manſlaughter, rape, robbery, unlawful impriſonment, and the like. 1 *Haw.* 130.

4. Alſo it hath been holden, that it may be forfeited by any treaſon againſt the king's perſon, and alſo by any unlawful aſſembly in terror of the people, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his preſence threatning to beat him. 1 *Haw.* 130.

Otherwiſe it is if the party be abſent; and yet if the party ſo bound ſhall threaten to kill or beat a perſon who is abſent, and after ſhall lie in wait for him to kill or beat him, this is a forfeiture of the recognizance. *Dalt. c.* 121.

5. However, it ſeems that it ſhall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, raſcal, or drunkard; for tho' ſuch words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the ſpeaker deſigned to carry his reſentment any farther: And it hath been ſaid, that even a recognizance for the good behaviour ſhall not be forfeited for ſuch words; from whence it follows *a fortiori*, that a recognizance for the peace ſhall not. 1 *Haw.* 130.

6. Alſo, there are ſome actual aſſaults on the perſon of another, which do not amount to a forfeiture of ſuch recognizance; as if an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a parent in a reaſonable manner chaſtiſe his child; or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar; or a gaoler his priſoner; or even a huſband his wife, as ſome ſay; or if one confine a friend who is mad, and bind and beat him, in ſuch manner as is proper in his circumſtances; or if a man force a ſword from one who offers to kill another therewith; or if a man gently lay is hands

hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or if a man beat another (without wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs him of his land or goods, or the goods of another delivered to him to be kept, and will not deſiſt upon his laying his hands gently on him, and diſturbing him; or if a man beat, or as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with, or beat one who attempts to kill any ſtranger; or if a man even threaten to kill one, who puts him in fear of death, in ſuch a place where he cannot ſafely fly from him; or if one impriſon thoſe whom he ſees fighting, till the heat is over. 1 *Haw.* 130, 131.

X. How the recognizance being forfeited ſhall be proceeded on.

It is ſaid, that the juſtices cannot in any caſe proceed againſt the party, for a forfeiture of his recognizance, either in reſpect of his not appearing, or breaking the peace; but that the recognizance it ſelf, with the record of default of appearance, ought to be removed into ſome of the courts at *Weſtminſter*, who ſhall proceed by *ſcire facias* upon ſuch recognizance: And ſo it ought to be, if it be preſented by the jury, or great inqueſt, that the party hath forfeited his recognizance, by breach of the peace. 1 *Haw.* 130. *Dalt. Old Ed. c.* 70.

XI. How ſuch recognizance may be diſcharged.

1. He who is bound to the peace, and to appear at a certain day, muſt appear at that day, and record his appearance, altho' he who craved the peace cometh not to deſire that it may be continued; otherwiſe the recognizance cannot be diſcharged. *Dalt. c.* 120.

2. If the recognizance be made to keep the peace generally, without any time or day limited, it ſhall be conſtrued to be during the party's life; and this the juſtice may do upon reaſonable cauſe; but if ſuch ſurety be ſo taken, during the offender's life, neither the king, nor the juſtice, nor the party, can releaſe or diſcharge it: And therefore the juſtice muſt be well adviſed, how he granteth ſuch ſurety. *Dalt. c.* 119, 120.

3. But it ſeems to be agreed, that it may be diſcharged by the death or demiſe of the king in whoſe reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. 1 *Haw.* 129.

4. Alſo, it hath been holden, that it may be diſcharged by the releaſe of the party at whoſe complaint it was taken, being certified together with it; but this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject but to the king; and conſequently cannot be diſcharged by the ſubject, who is not a party to it: however, ſuch a releaſe will be a good inducement to the court, to which ſuch a recognizance ſhall be certified, to diſcharge it. 1 *Haw.* 129.

5. And if a man be bound to keep the peace towards the king and all his people, but not towards any perſon certain, and to appear at ſuch a ſeſſions, the court at that ſeſſions may make proclamation, that if any man can ſhew cauſe, why the peace granted againſt ſuch a one ſhall be continued, he ſhall ſpeak; and if no perſon cometh to demand the peace againſt him, or to ſhew cauſe why it ſhould be continued, then the court may diſcharge him. But if a man be bound as aforeſaid, and *eſpecially to keep the peace towards a certain perſon*, there tho' ſuch perſon cometh not to deſire the peace may be continued, yet the court by their diſcretion may bind him over till the next ſeſſions, and that may be to keep the peace againſt that perſon only if they ſhall think good; for it may be that the perſon who firſt craved the peace is ſick, or otherwiſe letted, ſo as he cannot come to that ſeſſions to demand the continuance of the peace further. *Dalt. c.* 120.

6. Alſo it is certain, that ſuch a recognizance cannot be pardoned or releaſed by the king, before it is broken; becauſe the ſubject hath a kind of intereſt in it; but being forfeited, then the king, and no other, may releaſe and pardon the forfeiture. 1 *Haw.* 129.

7. And it is ſaid, that the ſureties are not diſcharged by their death; but that their executors or adminiſtrators (as hath been ſaid) do continue bound. 1 *Haw.* 129. *Dalt. c.* 120.

8. Likewiſe, if the party be impriſoned for default of ſureties, and after, he that demanded the peace againſt him happen to die; it ſeemeth the juſtice may make his liberate or warrant for the delivery of ſuch priſoner, for after ſuch death, there ſeemeth no cauſe to continue the other in priſon. Alſo, any juſtice may, upon the offer of ſuch priſoner, take ſurety of him for the peace, and may thereupon deliver him. *Dalt. c.* 118.

Surety for the good behaviour.

A MAN may be compelled to find ſureties, both for the good behaviour, and for the peace; and yet the good behaviour includeth the peace: and he that is bound to the good behaviour, is therein alſo bound to the peace. *Dalt. c.* 122.

This ſurety for the good behaviour being of near affinity to ſurety for the peace, both as to the manner in which it is to be taken, ſuperſeded, and diſcharged, it ſeemeth not to require a particular conſideration, ſave only as to theſe two points;

I. For what miſbehaviour it is to be required.
II. For what it ſhall be forfeited.

I. For what miſbehaviour it is to be required.

1. It doth not appear, that the conſervators of the peace at common law had any power as touching the *good behaviour*, further than as it had a relation to the *peace*; and not as it is contra-diſtinguiſhed from it. And it ſeemeth, that the power which the juſtices of the peace do exerciſe at this day, in relation thereunto, doth ſolely depend upon the commiſſion of the peace, and the ſtatute of the 34 *Ed.* 3. *c.* 1. (Except in ſome ſpecial inſtances wherein the power of binding to the good behaviour is given to them by particular ſtatutes, which pertain not to this general title.)

2. The words in the commiſſion are theſe: *We have aſſigned you, jointly and ſeverally, and every one of you, our juſtices to keep our peace—and to cauſe to come before you, or any of you, all thoſe who to any one or more of our people, concerning their bodies, or the firing their houſes, have uſed threats, to find ſufficient ſecurity for the peace, or their good behaviour, towards us and our people; and if they ſhall refuſe to find ſuch ſecurity, then them in our priſons, until they ſhall find ſuch ſecurity, to cauſe to be ſafely kept.*

3. The ſtatute of the 34 *Ed.* 3. *c.* 1. as to this matter runs thus: *In every county ſhall be aſſigned for the keeping of the peace, one lord, and with him three or four of the moſt worthy in the county, with ſome learned in the law; and they ſhall have power to reſtrain the offenders, rioters, and all other barators, and to purſue, arreſt, take, and chaſtiſe them ac-*

cording to their treſpaſs or offence; and to cauſe them to be impriſoned and duly puniſhed, according to the law and cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions and good adviſement; and alſo to inform them, and to inquire of all thoſe that have been pillers and robbers in the parts beyond the ſea, and be now come again, and go wandring, and will not labour as they were wont in times paſt; and to take and arreſt all thoſe that they may find by indictment, or by ſuſpicion, and to put them in priſon; and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people, and the other duly to puniſh, to the intent that the people be not by ſuch rioters or rebels troubled nor endamaged, nor the peace blemiſhed, nor merchants nor other paſſing by the highways of the realm diſturbed, nor put in the peril which may happen of ſuch offenders.

4. This ſtatute ſeems to have had in view chiefly the diſorders to which the country was then liable, from great numbers of diſbanded ſoldiers, who having ſerved abroad in the wars of that victorious king, were grown ſtrangers to induſtry, and were rather inclined to live upon rapine and ſpoil. *Barl.* 524.

5. But whatever the natural and obvious ſenſe of it may be, when compared with the hiſtory and circumſtances of thoſe times, it is certain that it hath been carried much farther by conſtruction, and the purport of it hath been extended by degrees, until at length there is ſcarcely any other ſtatute, which hath received ſuch a largeneſs of interpretation.

And that I may proceed with clearneſs in a matter ſo eſſential to the office of a juſtice of the peace, I will ſet down the ſeveral expoſitions which have been given of this ſtatute from time to time, by learned men; and then raiſe ſuch obſervations thereupon, as the ſubject will naturally ſuggeſt.

6. The firſt unfolding of the ſenſe of this ſtatute which hath occurred, was in the caſe of Sir *Richard Croftes* and Sir *Richard Corbet*, in the ſecond year of the reign of king *Hen.* 7. wherein it was reſolved by all the judges for that purpoſe aſſembled, that he who is bound to the good behaviour, ought not to do any thing which ſhall be cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace: But not in miſdoing of other things, which touch not the peace. Yet a diverſity was obſerved, between a breach of the peace, and a breach of the good behaviour; for the peace is not broken without an

affray

affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harneſs, or weapons, and the like, altho' they break not the peace. 2 *H.* 7. 2.

7. The ſecond inſtance, and upon which much ſtreſs hath been laid, was in the 13th year of the ſame king. In treſpaſs of aſſault, battery, and impriſonment, at *D.* the defendant ſaith, that one *Alice B.* had a houſe in the ſame town, and kept there ſuſpicious people, to wit, of common bawdry, and that the plaintiff oftentimes reſorted to the ſame houſe ſuſpiciouſly, with women of bad fame and name, whereby the conſtable of the ſame town, required the defendant to aid him to arreſt the plaintiff, to find ſurety of his good behaviour: whereby the defendant came with the ſaid conſtable at the hour of 12 in the night, and him found ſuſpiciouſly in the ſame place; whereupon he took him, and put him in ward: And it was holden by all the juſtices to be a good juſtification; for they ſaid, that it is lawful for every conſtable to take ſuſpected perſons, which wake in the night, and ſleep in the day, or that keep ſuſpicious company. 13 *H.* 7. 10.

8. In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of K. *Hen.* 8. ſaith, that it ſeemeth that one juſtice may, by the commiſſion, iſſue a warrant againſt a perſon to find ſurety of the good behaviour, by his diſcretion, as well as two juſtices may; and the words of the ſtatute of the 34 *Ed.* 3. are to the ſame effect: Otherwiſe, he ſays, damage may happen to ſome of the king's ſubjects, if the party be not attached, before that two juſtices have made the precept; yet (he ſays) the common uſage is, to make ſuch precept of the good behaviour in the name of two juſtices, and it is good to obſerve this direction. *Fitzh.* 7. *Crom.* 122.

9. In the next place, it is proper to take notice of a caſe adjudged in the court of king's bench, in the 30th of Q. *Eliz.* reported by L. *Coke*, 4 *Inſt.* 181. which was thus: At a ſeſſions at *Bridgewater*, in the county of *Somerſet*, one *William King* with ſureties was bound by recognizance to appear at the next general ſeſſions of the peace in the ſame county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next ſeſſions, *William King* appeared, and was indicted for ſlanderous words ſpoken ſince his binding, to wit, for ſaying at one time to *Edward Kyrton*, eſquire, *Thou art a pelter, thou art a lyar, and haſt told my lord lies.* And he was further indicted, that ſince the ſaid recognizance, *the cloſe of one* John Wich *with force and arms he broke and entred,*

and the cattle of the ſaid John *depaſturing in the ſaid cloſe unlawfully vexed and chaſed.* And afterwards at another time he ſaid to the ſaid *Kyrton, thou art a drunken knave.* Which indictment was removed into the king's bench. And hereupon it was debated divers times both at the bar and the bench, whether admitting all that is contained in the indictment to be true, any thing therein was in judgment of law a breach of the ſaid recognizance. And it was reſolved, that neither any of the words, nor the treſpaſs, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for tho' the ſaid words *thou art a liar, thou art a drunken knave,* are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatned to beat or wound him, or the like; theſe tend immediately to the breach of the peace, and therefore are breaches of the recognizance of the good behaviour. And this diverſity (lord *Coke* ſays) was juſtly collected upon the coherence and context of the ſtatute of the 34 *Ed.* 3. whereby juſtices are aſſigned for keeping of the peace, and to reſtrain the offenders, rioters, and all other barators, and to chaſtiſe them according to their treſpaſs and offence; and to inquire of pillors and robbers in the parts beyond the ſeas, and be now come again, and go wandring and will not labour: And thus much for the puniſhment of offences againſt the peace after they be done. Then followeth an expreſs authority given to the juſtices, for prevention of ſuch offences before they be done, namely, *and to take of all them that be not of good fame* (that is, that be defamed and juſtly ſuſpected that they intend to break the peace) *where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people* (which muſt concern the king's peace, as is alſo provided by the words ſubſequent) *to the intent that the people be not by ſuch rioters troubled or endamaged, nor the peace blemiſhed, nor merchants nor other paſſing by the highways diſturbed, nor put in the peril that may happen of ſuch offenders.* And as for the treſpaſs; altho' every wrongful treſpaſs is by force and arms, and againſt the peace, yet theſe are not taken to be ſuch as ſhall make a breach of the good behaviour.

10. After this, Mr. *Lambard,* who wrote towards the beginning of the reign of K. *James* 1. ſaith thus: Surety of the good abearing is of great affinity with that of the peace; as being provided for preſervation of the peace, as that other is; for in the commiſſion of the peace, they are both conveyed under one tract of ſpeech, againſt ſuch as threaten

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to hurt mens bodies, or fire their houſes: which things (he ſays) are now commonly prevented by ſurety of the peace only.

And in the 2 *H.* 7. 2. (above recited) the ſurety of the good abearing is ſet forth to reſt in this point chiefly, that a man do nothing that may be cauſe of a breach of the peace; and that it doth not conſiſt in the obſervation of things that concern not the peace; and that it ſhould differ from ſurety of the peace in this, that where the peace is not broken without an affray, or battery, or ſuch like, this ſurety may be broken by the number of a man's company, or by his or their weapons or harneſs.

And herewithal (he ſays) do alſo agree certain precedents in the king's bench.

But all this notwithſtanding, he thinks that a man may reaſonably affirm, that the ſurety of good abearing ſhould not be reſtrained to ſo narrow bounds.

In proof of which, he proceeds to comment on the abovementioned ſtatute of the 34 *Ed.* 3. enabling the keepers of the peace *to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good abearing, towards the king and his people:* So that if a man be defamed, he may by virtue hereof, be bound to his good behaviour at the diſcretion of the juſtices. Now the doubt reſteth in this; to underſtand concerning what matters this defamation muſt be: and this (he thinks) may be partly gathered out of the ſaid ſtatute; for after it hath firſt given power to the wardens of the peace to arreſt and chaſtiſe offenders (that is to ſay, againſt the peace, rioters, and barators) then it willeth them to *inquire of ſuch as having been robbers beyond the ſea, were come over hither, and would not labour as they were wont*; and laſtly, it authorizeth them, *to take ſurety of the good behaviour of ſuch as be defamed*, namely, for any of thoſe former offences; for ſo it ſtandeth well together that they ſhall both puniſh ſuch as have already ſo offended, and ſhall alſo provide, that others ſhall not likewiſe offend.

But he ſays, the further this bond of the good abearing doth extend, the more regard there ought to be taken in the awarding of it; and therefore (ſays he) altho' the juſtices have power to grant it, either by their own diſcretion or upon the complaint of others, even as they may that of the peace, yet I wiſh rather, that they do not command it but only upon ſufficient cauſe ſeen to themſelves, or upon the complaint of other very honeſt and credible perſons.

And

And then, being about to ſet forth the form of a warrant, and of a recognizance for the good behaviour, he ſays,——And here, foraſmuch as one juſtice alone, and out of ſeſſions, may both by the firſt clauſe of the commiſſion, and alſo by the opinion of *Fitzherbert*, grant this ſurety of the good abearing (altho' the common practice be, that two ſuch juſtices do join in that doing, whereof alſo *Fitzherbert* hath very good liking) I will not ſtick to ſet forth the common forms as well of the precept as of the recognizance for the ſame, wherein if I ſhall uſe the names of two juſtices, you muſt take that to be done according to the common faſhion, and not of any neceſſity in law. For as I would more gladly uſe the aſſiſtance of a fellow juſtice in this behalf, if I may conveniently have it; ſo if that may not be gotten, I would not greatly fear, when good cauſe ſhall require, do undertake the thing my ſelf alone.

And beſides this, he ſays, you may ſee admitted by the opinion of the court, 13 *H.* 7. that if a man in the night ſeaſon, haunt a houſe that is ſuſpected for bawdry, or uſe ſuſpicious company, then may the conſtable arreſt him to find ſurety for his good abearing; for bawdry is not merely a ſpiritual offence, but mixed, and founding ſomewhat againſt the peace of the land.

And therefore (ſays he) it ſhall not be amiſs at this day, in my ſlender opinion, to grant ſurety of the good abearing, againſt him that is ſuſpected to have begotten a baſtard child, to the end that he may be forthcoming when it ſhall be born; for otherwiſe there will be no putative father found, when the juſtices ſhall after the birth come to take order for his puniſhment. *Lamb.* 115.—119.

11. In the next place, Mr. *Pulton*, who lived about the ſame time with *Lambard*, writeth thus; The ſurety of the good abearing is ordained for the preſervation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may ſooner ſlide into the peril and danger of it. The ſurety of good abearing is moſt commonly granted in open ſeſſions, or by two or three juſtices; or, upon a *ſupplicavit*, and great cauſe ſhewed and proved, it is granted in the chancery or king's bench. And tho' one juſtice alone may grant it if he will, yet it is ſeldom done ſo, unleſs it be to prevent ſome great, ſudden, and imminent enormity or danger. The ſurety of the peace is moſt times taken at the requeſt of one for the preſervation of the peace chiefly againſt one. But the ſurety of the good abearing is oftentimes granted at the ſuit of divers, and thoſe

muſt

muſt be men of credit, and to provide for the ſafety of many; for the effect and purport thereof is, that the party bound ſhall demean himſelf well in his port, behaviour, and company, and do nothing that may be the cauſe of breach of the peace, or in putting the people in fear or trouble: And it is chiefly granted againſt common barrators, common rioters, common quarrellors, common peace breakers, and perſons greatly defamed for reſorting to houſes ſuſpected to maintain incontinency or adultery, and againſt thoſe that be generally feared to be robbers or ſpoilers of the king's people, or which do endamage, diſturb, trouble, or put in peril paſſengers by the way. *Pult.* 18.

12. Afterwards Mr. *Dalton*, who wrote towards the latter end of King *James* the firſt his reign, ſays, The ſurety of the good behaviour is of great affinity with that of the peace, and is provided chiefly for the preſervation of the peace; and that it is moſt commonly granted either in the open ſeſſions, or by two or three juſtices out of ſeſſions. Yet by the words of the commiſſion, as alſo by the common opinion of the learned, one juſtice alone, out of ſeſſions, may grant this ſurety of the good behaviour. But this is not uſual, unleſs it be to prevent ſome great and ſudden danger; eſpecially againſt a man that is of any good eſtate, carriage or report. And it ſhall be good diſcretion in the juſtices, that they do not grant it, but either upon ſufficient cauſe ſeen to themſelves, or upon the ſuit and complaint of others, and the ſame very honeſt and credible perſons. *Dalt. c.* 123.

13. In the next place, Mr. *Hawkins*, who wrote in the reign of K. *George* the firſt, ſaith thus: There ſeem to have been ſome opinions, that the ſtatute, ſpeaking of thoſe that be *not of good fame*, means only ſuch as are defamed, and juſtly ſuſpected, that they intend to break the peace, and that it doth not any way extend to thoſe who are guilty of other miſbehaviours not relating to the peace. But this ſeems much too narrow a conſtruction; ſince the abovementioned expreſſion of perſons of *evil fame*, in common underſtanding, as properly includes perſons of ſcandalous behaviour in other reſpect, as thoſe who by their quarrelſome behaviour give juſt ſuſpicion of their readineſs to break the peace; and accordingly it ſeems always to have been the better opinion, that a man may be bound to his good behaviour for many cauſes of ſcandal, which give him a bad fame, as being contrary to good manners only; as for haunting bawdy houſes with women of bad fame; or for keeping bad women in his own houſe; or for ſpeaking words of contempt of an inferior magiſtrate,

as a juſtice of the peace, or mayor, tho' he be not then in the actual execution of his office; or of an inferior officer of juſtice, as a conſtable, and ſuch like, being in the actual execution of his office.

However it ſeems the better opinion, that no one ought to be bound to the good behaviour, for any raſh, quarrelſome, or unmannerly words, unleſs they either directly tend to a breach of the peace, or to ſcandalize the government, by abuſing thoſe who are intruſted by it with the adminiſtration of juſtice, or to deter an officer from doing his duty; and therefore it ſeems, that he who barely calls another rogue, or raſcal, or teller of lies, or drunkard, ought not for ſuch cauſe to be bound to the good behaviour.

However, ſays he, I cannot find any certain preciſe rules, for the direction of the magiſtrate in this reſpect; and therefore am inclined to think, that he has a diſcretionary power to take ſuch ſurety of all thoſe whom he ſhall have juſt cauſe to ſuſpect to be dangerous, quarrelſome, or ſcandalous; as of thoſe who ſleep in the day, and go abroad in the night; and of ſuch as keep ſuſpicious company; and of ſuch as are generally ſuſpected to be robbers, and the like; and of eves droppers; and common drunkards; and all other perſons, whoſe miſbehaviour may reaſonably be intended to bring them within the meaning of the ſtatute, as perſons of evil fame, who, being deſcribed by an expreſſion of ſo great latitude, ſeem in a great meaſure to be left to the judgment of the magiſtrate. But if he commit one for want of ſureties, he muſt ſhew the cauſe with convenient certainty. 1 *Haw.* 132.

14. And thus the ſenſe of the ſtatute hath been extended, not only to offences immediately relating to the peace, but to divers miſbehaviours not directly tending to a breach of the peace; inſomuch as it is become difficult to define how far it ſhall extend, and where it ſhall ſtop.

Mr. *Dalton*, in order to determine the ſame with ſome kind of certainty, hath (notwithſtanding his opinion as abovementioned) inſerted a number of inſtances, wherein ſureties of the good behaviour may be granted; and they are theſe that follow:

(1) Againſt rioters.

(2) Barators.

(3) Common quarrellors, and common breakers of the peace.

(4) Such as lie in wait to rob, or ſhall be ſuſpected to lie in wait to rob, or ſhall aſſault, or attempt to rob another,

other, or ſhall put paſſengers in fear or peril; or ſhall be generally ſuſpected to be robbers by the highway.

(5) Such as are like to commit murder, homicide, or other grievances, to any of the king's ſubjects in their bodies.

(6) Such as ſhall practiſe to poiſon another: one inſtance of which may be the poiſoning their food; thus Mr. *Dalton* granted the good behaviour againſt one who had bought ratſbane, and mingled it with corn, and then caſt it amongſt his neighbour's fowls, whereby moſt of them died.

(7) Such as in the preſence or hearing of the juſtice, ſhall miſbehave himſelf in ſome outrageous manner of force or fraud.

(8) Such as are greatly defamed for reſorting to houſes ſuſpected to maintain adultery, or incontinency.

(9) Maintainers of houſes commonly ſuſpected to be houſes of common bawdry.

(10) Common whoremongers and common whores; for bawdry is an offence temporal as well as ſpiritual, and is againſt the peace of the land.

(11) Night walkers, that ſhall eves-drop mens houſes, or ſhall caſt mens gates, carts, or the like, into ponds, or commit other outrages and miſdemeanors in the night, or ſhall be ſuſpected to be pilferers, or otherwiſe like to diſturb the peace, or that be perſons of ill behaviour, or of evil fame or report generally, or that ſhall keep company with any ſuch, or with any other ſuſpicious perſon in the night.

(12) Suſpected perſons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live; unleſs upon examination they ſhall give a good account of ſuch their living.

(13) Common gameſters, eſpecially if they have not whereon to live.

(14) Such as raiſe hue and cry without cauſe.

(15) Libellers.

(16) Putative father of a baſtard child.

(17) Such as perſuade or procure the putative father to run away, or the mother to be conveyed away, whereby ſhe leaveth her child to the charge of the town.

(18) Such as abuſe a juſtice's warrant, or ſhall abuſe him or the conſtable in executing their office. Nay, it ſeemeth (he ſays) that he who ſhall uſe words of contempt, or contrary to good manners, againſt a juſtice of the peace, tho' it be not at ſuch a time as he is executing his office, yet he ſhall be bound to his good behaviour.

(19) Such

(19) Such as charge another before a juſtice with felony, riot, or forcible entry, and yet will not proſecute or give evidence.

(20) In general, whatſoever act or thing is of it ſelf a miſbehaviour, is cauſe ſufficient to bind ſuch an offender to the good behaviour. *Dalt. c.* 124.

To which others have added other inſtances: As,

(21) Forcible entry. 1 *Haw.* 124.

(22) Mr. *Hawkins* ſays, that he hath heard it agreed in the court of king's bench, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law; yet it ſeems, he ſays, that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame. 1 *Haw.* 195.

(23) A man did beat a woman in *Weſtminſterhall*, and he was bound to the good behaviour; and ſo (ſays Mr. *Crompton)* he may be bound to the peace or good behaviour, where he ſtriketh a perſon in the preſence of the juſtices in ſeſſions. *Crom.* 124.

(24) A man was bound to the good behaviour by the court of king's bench, for aſſaulting and threatning a perſon ſo, that he could not attend the court in a ſuit there, without great coſt. And ſo it ſeemeth that it may be done, where one cometh to the ſeſſions about a traverſe to be tried there, or to prefer a bill of indictment, if he be aſſaulted or threatned. *Crom.* 125.

15. I have omitted to make any remarks in the progreſs of theſe authorities, being willing to exhibit them together in one view; I proceed now to take notice of ſuch obſervations as do occur upon the whole.

Firſt, It appears from hence, that the univerſal practice of one juſtice binding to the good behaviour, is but of a modern date; altho' the law for it is the ſame now, that it was near 400 years ago: and that it was a long time doubted, whether one juſtice alone could require ſureties of the good behaviour. But here a diſtinction ought to be made, between the power given by the commiſſion of the peace, and the power given by the abovementioned ſtatute: As to the commiſſion, there ſeemeth to be no foundation for any doubt, but that thereby one juſtice alone may require ſuch ſureties; for the words are expreſs, *we have aſſigned you, jointly and ſeverally, and every one of you*; but then that extends only to two inſtances, namely, to *the threatning of a perſon concerning his body, or the firing of his houſe.* As to the ſtatute, the doubt ſeems to have ariſen upon this; in that having appointed who ſhall be aſſigned

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for juſtices, it then directeth, that *They ſhall have power to reſtrain offenders*; and it is holden, as Mr. *Lambard* hath obſerved, that if no power be expreſly given by any ſtatute to any one juſtice alone, he cannot otherwiſe compel the obſervation thereof, than by the help of his fellow juſtices. And Mr. *Hawkins* ſpeaking hereof in the caſe of riots, ſays, that if one juſtice alone, proceeding upon this ſtatute, ſhall arreſt *an innocent perſon* as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing of himſelf; becauſe no one ſingle juſtice is by this ſtatute made a judge of the ſaid offence: Yet nevertheleſs, he ſays, by a favourable conſtruction which this ſtatute hath received for the advancement of juſtice, it hath been reſolved, that any one juſtice, upon this ſtatute, *if he finds the perſons riotouſly aſſembled*, may, without ſtaying for his companions, arreſt the offenders, and bind them to their good behaviour.

Secondly, It ſeemeth from what hath been rehearſed, that the words, *not of good fame*, were generally underſtood for a long time, to refer to ſuch offences only, as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great in-let to the larger, and at length almoſt unlimited interpretation of the words, was the caſe abovementioned 13 *H.* 7. wherein it was adjudged to be lawful to arreſt a man for the good behaviour, for frequenting a ſuſpected bawdy houſe, with women of bad fame. And this is the reaſon which Mr. *Dalton* gives for many of his inſtances above ſpecified, namely, that they are more properly againſt the peace, than this ſame caſe of avowtry.

Fourthly, That when once the gap was opened for the admiſſion of other offences not immediately relating to the peace, they flowed in and multiplied. Thus, in the caſe of baſtardy, having ſome affinity with the other of frequenting bawdy houſes, Mr. *Lambard* thought, that with equal reaſon, the reputed father of a baſtard child might be bound to the good behaviour; and in a few years after, Mr. *Dalton* delivers it abſolutely, that he may be ſo bound.

Fifthly, That therefore the natural and received ſenſe of any ſtatute ought not to be departed from without extreme neceſſity; for that one conceſſion will make way for another, and the latter will plead for the ſame right of admiſſion as the former.

Sixthly, That notwithſtanding the aforeſaid inſtances given by Mr. *Dalton* and others, it may not be ſafe in all caſes to rely upon every one of them without diſtinction;

not

not only becauſe it is almoſt impoſſible for any two caſes to be exactly alike in all their circumſtances, but alſo becauſe in fact divers of them at different times have been adjudged otherwiſe, and others of them have not prevailed without much difficulty and contradiction in the courts above, and perhaps were at length admitted rather from the conveniency and reaſonableneſs of the thing itſelf, and from an indulgence uſually allowed to thoſe gentlemen who ſerve their country without gain, and oftentimes with much trouble, than from any clear, poſitive, and expreſs power given to them by the commiſſion, or by the ſaid ſtatute.

Seventhly, That notwithſtanding all which hath been ſaid, perhaps the caſe before recited, concerning the frequenting of a ſuſpected bawdy houſe, will not wholly ſupport the weight which ſo many authors have laid upon it. For the queſtion, whether a juſtice of the peace had cognizance of the offence, by virtue of the commiſſion of the peace, or of the ſtatute of the 34 *Ed.* 3. was no part of the diſpute; for it was an arreſt by the conſtable *ex officio*, as a conſervator of the peace at common law, and without any warrant from a magiſtrate: And the queſtion was not, whether the conſtable might require ſureties for the good behaviour, as a thing different from ſureties for the peace, but whether in that caſe he could arreſt at all or not.

And if the authority of this caſe ſhall be abated, ſeveral of the abovementioned inſtances will abate in proportion.

Eighthly, It is to be obſerved, that others of the abovesaid inſtances, were eſtabliſhed upon matters originally determined in the court of king's bench, and Mr. *Crompton* himſelf doth refer to the authority and practice of that court in ſeveral inſtances. *Crom.* 120. But it doth by no means follow from what the juſtices of the court of king's bench may do, that juſtices of the peace may do the like; for their authority is circumſcribed and limited by their commiſſion and the ſtatute law.

Ninthly, That it will perhaps abate ſome other of the foregoing inſtances, if we attend to this conſideration; that there is a great difference between what the juſtices in ſeſſions may do, after conviction by a jury, for an offence committed, and what a ſingle juſtice out of the ſeſſions may do, before an offence is committed, and to prevent the ſame from being committed; or what a ſingle juſtice may do, upon a ſummary conviction before him, for an offence, as directed by ſome ſpecial act of parliament. The truth is, binding to the good behaviour was a diſcretionary judgment at the common law, given by a court of record, for an offence at the ſuit of the king, after a common law

conviction

conviction by verdict of twelve men. Trial by his peers is the *Engliſhman*'s birthright by the great charter, and cannot be taken away but by an authority equal to that which eſtabliſhed it, that is, by act of parliament; and therefore where an act gives a ſummary conviction before a juſtice of the peace, and inflicts a puniſhment upon ſuch conviction, ſuch ſtatute muſt be purſued both as to the conviction and puniſhment. And it ſeemeth incongruous, that a juſtice of the peace ſhall have power to bind a man to the good behaviour, for an offence which he himſelf hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not, and cannot legally appear to him, that the perſon is guilty.

Tenthly, That therefore upon the whole it may be proper to conclude, that the magiſtrate in this article of the good behaviour, cannot exerciſe too much caution and good adviſement; that in matters which the law hath left indefinite, it is better to fall ſhort of, than to exceed his commiſſion and authority; that to bind a man to the good behaviour upon the ſtatute for *evil fame* in general, may not always be with ſafety; not only becauſe upon an action brought it may be hard to prove ſuch evil fame, but alſo becauſe in fact it is not always true, for many a good man hath been evil ſpoken of: That altho' in ſome caſes, a juſtice of the peace may have a *diſcretionary* power (as Mr. *Hawkins* expreſſeth it) yet he muſt remember withal, that it is a *legal* diſcretion, as Mr. *Barlow* terms it, in which in favour of liberty great tenderneſs is to be uſed; or, as lord *Coke* hath defined it, diſcretion is a knowledge or underſtanding to diſcern between truth and falſhood, between right and wrong, between ſhadows and ſubſtance, between equity and colourable gloſſes and pretences, and not to do according to our wills and private affections; and ſuch diſcretion ought to be limited and bounded with the rules of reaſon, law, and juſtice. 5 *Co.* 100. 10 *Co.* 140.

II. For what it ſhall be forfeited.

1. This hath been handled in part as it fell in with the former ſection: And agreeably to the doctrine there laid down, Mr. *Dalton* ſays, that he who is bound to the good behaviour ought to demean himſelf well in his carriage and in his company, not doing any thing which ſhall be a cauſe of breach of the peace, or to put the people in fear, dread, or trouble; and ſo ſhall be intended of all things which concern the peace, but not in miſdoing of other things which touch not the peace. *Dalt. c.* 122.

2. And Mr. *Hawkins* ſaith, It hath been laid down as a general rule, that whatever will be a good cauſe to bind a man to his good behaviour, will forfeit a recognizance for it; but this hath ſince been denied, and indeed ſeems by no means to be maintainable, becauſe the ſtatute in ordering perſons of evil fame to be bound in this manner, ſeems in many places chiefly to regard the prevention of that miſchief which they may juſtly be ſuſpected to be likely to do; and in that reſpect requires them to ſecure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in ſuch caſes to make perſons forfeit their recognizance, who yet may juſtly be compellable to give one, as thoſe who keep ſuſpicious company, or thoſe who ſpend much money idly, without having any viſible means of getting it honeſtly, or thoſe who lie under a general ſuſpicion of being rogues, and the like. 1 *Haw.* 132, 133.

3. However it ſeems that ſuch a recognizance ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited; but alſo for ſome others, for which ſuch a recognizance cannot be forfeited; as for going armed with great numbers, to the terror of the people, or ſpeaking words tending to ſedition; and alſo for all ſuch actual miſbehaviours which are intended to be prevented by ſuch a recognizance, but not for barely giving cauſe of ſuſpicion of what perhaps may never actually happen. 1 *Haw.* 133.

Warrant for the peace, or good behaviour, in the king's majeſty's name.

Weſtmorland. GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth: To our ſheriff of the county of* Weſtmorland, *to the conſtable of the hundred of* ——— *in the ſaid county, to the petty conſtables of the town of* ——— *in the ſaid county, and to all and ſingular our bailiffs and other miniſters in the ſaid county, as well within liberties as without, greeting:*

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before Sir* George Dalſton, *baronet, one of our juſtices aſſigned to keep the peace within the ſaid county, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* ——— *in the ſaid county, yeoman, will beat* [*wound, maim, or kill*] *him the ſaid* A. I. *and hath therewithal prayed ſurety of the peace againſt him the ſaid* A. O.

A. O. [Or, if for the good behaviour,——— *hath taken a corporal oath, that* A. O. *of* ——— *in the ſaid county, yeoman, hath threatned to beat him the ſaid* A. I. or, *to burn the houſe of him the ſaid* A. I. *and hath therewithal prayed ſurety of the good behaviour againſt him the ſaid* A. O.] *Therefore we command and charge you, jointly and ſeverally, that immediately upon the receipt hereof you bring the ſaid* A. O. *before the ſaid Sir* George Dalſton, *to find ſufficient ſurety and mainpriſe, as well for his perſonal appearance at the next general quarter ſeſſions of our peace, to be holden at* Appleby, *or elſewhere, in and for the ſaid county, as alſo for our peace in the mean time to be kept towards us and all our liege people, and chiefly towards the ſaid* A. I. *that is to ſay, that he the ſaid* A. O. *ſhall not do, nor by any means procure or cauſe to be done, any of the ſaid evils, to any of our ſaid people, and eſpecially to the ſaid* A. I. [Or, if for the good behaviour, ——— *as alſo for his good behaviour in the mean time, towards us and all our liege people, and eſpecially towards him the ſaid* A. I.] *Witneſs the ſaid Sir* George Dalſton *at* Smardale *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of our reign.*

If the juſtice ſhall think fit that he ſhall be carried immediately to gaol, for default of ſureties, without being brought before him, or any other juſtice, this clauſe may be inſerted, *viz.* ——— *and eſpecially towards him the ſaid* A. I. *And if he the ſaid* A. O. *ſhall refuſe ſo to do, that then immediately, without expecting any further warrant, you him ſafely convey, or cauſe to be ſafely conveyed, to our common gaol in the ſaid county* (or, *to the houſe of correction at* ——— *in the ſaid county*), *there to remain until he ſhall willingly do the ſame: So that he may be before our ſaid juſtices at the ſaid next general quarter ſeſſions of our peace, then and there to anſwer unto us for his contempt in this behalf. And ſee that you certify your doings in the premiſſes, to our ſaid juſtices at the ſaid ſeſſions, bringing then thither this precept with you.*

Warrant for the peace, or good behaviour, in the name of the juſtice himſelf.

Weſtmorland. SIR William Fleming, *baronet, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, To the ſheriff of the ſaid county, to the high conſtable of* ——— *in the ſaid county, to the petty conſtables of* ——— *in the ſaid county, and to all other*

the miniſters and officers of our ſaid lord the king, within the ſaid county, and to every of them, greeting.

Foraſmuch as A. I. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me, and hath taken a corporal oath, that he the ſaid* A. I. *is afraid that* A. O. *of* ——— *in the ſaid county, yeoman, will beat him (wound, maim, kill, or do to him ſome bodily hurt) and hath therefore prayed ſurety of the peace againſt him the ſaid* A. O. [Or, if for the good behaviour, *That* A. O. *of* ——— *in the ſaid county, yeoman, hath threatned to do ſome bodily hurt to him the ſaid* A. I. or, *to burn the houſe of him the ſaid* A. I. *and hath therefore prayed ſurety of the good behaviour againſt him the ſaid* A. O.] *Theſe are therefore on the behalf, and in the name of our ſaid lord the king, to command you jointly and ſeverally, that immediately upon the receipt hereof you bring the ſaid* A. O. *before me, to find ſurety as well for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden at* Kirkby *in* Kendale *in and for the ſaid county, as alſo for his keeping the peace* [Or, *for his being of the good behaviour*] *in the mean time towards the king and all his liege people, and chiefly towards the ſaid* A. I. *Given under my ſeal at* Ridale *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king.*

On the warrant may be directed to any of theſe officers abovenamed, particularly; or to any other indifferent perſon or perſons, as followeth:

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtables of the town of ——— in the ſaid county, and to either of them.

FORASMUCH *as* A. I. *the wife of* B. I. *of your ſaid town, labourer, hath required ſureties of the peace* [or, *of the good behaviour*] *before me* Daniel Wilſon, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, againſt* A. O. *of your ſaid town, butcher, and withal hath taken her corporal oath before me, that ſhe requireth the ſame not for any private malice, hatred, or evil will, but ſimply that ſhe is afraid that he the ſaid* A. O. *will do to her ſome bodily miſchief* [or as the caſe ſhall be: And if it is for the good behaviour, then add, ——*and that he the ſaid* A. O. *hath threatned to do ſome bodily miſchief to her the ſaid* A. I. or *to burn her houſes*] *Theſe are therefore in the name of our ſaid lord the king to charge and*

command you, that immediately upon ſight hereof, you or one of you do bring the ſaid A. O. *before me to find ſufficient ſureties, as well for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, as alſo that he the ſaid* A. O. *ſhall in the mean time keep the peace* [Or, *be of the good behaviour*] *as well towards our ſaid lord the king, as towards all his liege people, and eſpecially towards the ſaid* A. I. *Dated at* Dallam Tower *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth.*

Another warrant for the peace, or good behaviour.

Weſtmorland. { To the conſtable of ——— in the ſaid county.

FORASMUCH *as* A. I. *of* ——— *aforeſaid in the county aforeſaid, yeoman, hath perſonally come before me* Thomas Shepherd, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, and hath taken his corporal oath, that* A. O. *of* ——— *aforeſaid in the county aforeſaid, yeoman, hath aſſaulted, beaten, and wounded him the ſaid* A. I. *and further hath threatned him concerning his body, inſomuch that he the ſaid* A. I. *is afraid that the ſaid* A. O. *will beat, wound, maim, or kill him the ſaid* A. I. *or do to him ſome other bodily harm; and thereupon he the ſaid* A. I. *hath prayed ſecurity of the peace,* [or, *of the good behaviour*] *to be had or granted to him againſt the ſaid* A. O. *Theſe are therefore to require you in the name of our ſaid lord the king, immediately upon the ſight hereof to bring the ſaid* A. O. *before me, to find ſufficient ſureties for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, then and there to anſwer the premiſſes, and in the mean time that he the ſaid* A. O. *keep the peace,* [or, *ſhall be of the good behaviour,*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards the ſaid* A. I. *Given under my hand and ſeal at* Kirkby *in* Kendale *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king.*

Note; The warrants above ſet forth, ſo far as they concern the good behaviour, are framed upon the clauſe in the commiſſion, impowering one juſtice to bind to the good behaviour certain offenders therein mentioned. The following

lowing warrant for the good behaviour ſimply, as contradiſtinguiſhed from the peace, is formed on the ſtatute of the 34 *Ed.* 3. ſo often abovementioned.

Warrant for the good behaviour, on the 34 *Ed.* 3. *c.* 1. from *Lambard* and *Dalton.*

Weſtmorland. WIlliams Winder, *eſquire, and* Richard Honeywood, *eſquire, juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, To the ſheriff of the ſaid county, to the conſtable of the hundred of* ——— *in the ſaid county, to the petty conſtables of the town of* ——— *in the ſaid county, and to all and ſingular bailiffs, conſtables, and other officers of our ſaid lord the king, as well within liberties as without, in the ſame county, greeting.*

Foraſmuch as we are given to underſtand, by the information, teſtimony, and complaint of many credible perſons, that A. O. *of* ——— *in the county aforeſaid, gentleman, and* B. O. *of the ſame, yeoman, are not of good name and fame, nor of honeſt converſation, but evil doers, rioters, barrators, and diſturbers of the peace of our ſaid lord the king, ſo that murder, homicide, ſtrifes, diſcords, and other grievances and damages amongſt the lieges of our ſaid lord the king concerning their bodies are likely to ariſe thereby; Therefore on the behalf of our ſaid lord the king, we command you, and every of you, that you omit not by reaſon of any liberty within the county aforeſaid, but that you attach, or one of you do attach the aforeſaid* A. O. *and* B. O. *ſo that you have them before us or others our fellows, juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, as ſoon as they can be taken* [or, *before the juſtices of our ſaid lord the king, aſſigned to keep the peace within the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county*] *to find then before us (or the ſaid juſtices) ſufficient ſurety and mainpriſe for their good behaviour towards our ſaid lord the king, and all his people, according to the form of the ſtatute in ſuch caſe made and provided. And this you ſhall in no wiſe omit, on the peril that ſhall enſue thereon. And have you before us, or before the ſaid juſtices* [*at the ſeſſions aforeſaid*] *this precept. Given under our ſeals at* Dufton *in the county aforeſaid, the* —— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* ———

Recognizance for the peace or good behaviour.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. O. *of* ——— *in the county aforeſaid, yeoman,* A. S. *of the ſame place, yeoman, and* B. S. *of the ſame place, yeoman, came before me* Thomas Carleton, *eſquire, one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and acknowledged themſelves to owe to our ſaid lord the king, to wit, the ſaid* A. O. *the ſum of* 20l. *the ſaid* A. S. *the ſum of* 10l. *and the ſaid* B. S. *the ſum of* 10l. *of good and lawful money of* Great Britain, *to be reſpectively made and levied of their ſeveral goods and chattels, lands and tenements, to the uſe of our ſaid lord the king, his heirs and ſucceſſors, if he the ſaid* A. O. *ſhall fail in performing the condition indorſed* [or *underwritten*].

Acknowledged before me
Thomas Carleton.

The condition of this recognizance is ſuch, that if the within bounden [or, *above bounden*] A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the county aforeſaid, to do and receive what ſhall then and there be injoined him by the court, and in the mean time ſhall keep the peace,* [or, *be of the good behaviour,* or, *ſhall keep the peace and be of the good behaviour*] *towards the king and all his liege people, and eſpecially towards* A. I. *of* ——— *in the ſaid county, yeoman; Then the ſaid recognizance ſhall be void, or elſe remain in its force.*

Mittimus for want of ſureties.

Weſtmorland. { To the conſtable of ——— and to the keeper of ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, yeoman, is now brought before me* John Dalſton, *eſquire, one of the juſtices of our lord the king aſſigned to keep the peace in and for the ſaid county, requiring him to find ſufficient ſureties to be bound with him in a recognizance for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, and in the mean time to keep the peace* [or, *be of the good behaviour*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards*

A. I. *of* ——— *in the ſaid county, yeoman; and whereas he the ſaid* A. O. *hath refuſed and doth now refuſe before me to find ſuch ſureties: Theſe are therefore in the name of our ſaid lord the king, to command you the ſaid conſtable, forthwith to convey the ſaid* A. O. *to the common gaol of our ſaid lord the king* [or, *to the houſe of correction*] *at* ——— *in the ſaid county, and to deliver him to the keeper thereof there, together with this precept: And I do, in the name of our ſaid lord the king, hereby command you the ſaid keeper, to receive the ſaid* A. O. *into your cuſtody in the ſaid gaol* [or, *houſe of correction*] *and him there ſafely to keep, until he ſhall find ſuch ſureties as aforeſaid. Given under my hand and ſeal, at* Acorn Bank *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the ſecond of* Great Britain, France, *and* Ireland, *king.*

The form of a *ſuperſedeas.*

Weſtmorland. ROGER Wilſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the county aforeſaid, To the ſheriff, bailiff, conſtables, and other the faithful miniſters and ſubjects of our ſaid lord the king within the ſaid county, and to every of them, greeting.*

Foraſmuch as A. O. *of* ——— *in the ſaid county, yeoman, hath perſonally come before me at* Caſterton *in the ſaid county, and hath found ſufficient ſurety, that is to ſay,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of the which hath undertaken for the ſaid* A. O. *under the pain of* 20 l. *and he the ſaid* A. O. *hath undertaken for himſelf under the pain of* 40 l. *that he the ſaid* A. O. *ſhall perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, then and there to do and receive what ſhall be injoined him by the ſaid court, and in the mean time ſhall well and truly keep the peace* [or, *be of the good behaviour*] *towards our ſaid lord the king, and all his liege people, and eſpecially towards* A. I. *of* ——— *yeoman; Therefore on the behalf of our ſaid lord the king I do command you, and every of you, that you utterly forbear and ſurceaſe to arreſt, take, impriſon, or otherwiſe by any means for the ſaid cauſe to moleſt the ſaid* A. O. *and if you have, for the ſaid occaſion, and for none other, taken or impriſoned him the ſaid* A. O. *that then him you deliver, or cauſe to be delivered and ſet at liberty, without further delay. Given at* Caſterton *aforeſaid, in the county aforeſaid, under my ſeal, this* ——— *day of* ——— *in the* ——— *year of the reign of* ———

This

This *ſuperſedeas* may be alſo in the name of the king, under the teſte of the juſtice, thus;

GEORGE *the ſecond by the grace of god* &c. *To the ſheriff* &c. *greeting: Foraſmuch as* A. O. *hath come before* Edward Wilſon, *eſquire, one of our juſtices aſſigned to keep the peace within our ſaid county, and hath found* &c. *We therefore command you, and every of you, that ye forbear* &c. *Witneſs the ſaid* Edward Wilſon *at* Dallam Tower *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of our reign.*

Releaſe of the ſurety for the peace, or good behaviour.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of* ——— *the aforeſaid* A. I. *hath come before me the ſaid* Fletcher Fleming, *eſquire, and freely remiſed and releaſed, as much as in him licth, the aforeſaid ſecurity of the peace* [or, *of the good behaviour*] *by him prayed before me againſt the above-named* A. O. *In witneſs whereof, I the ſaid* Fletcher Fleming *have hereunto ſet my ſeal. Given* &c.

This is to be written under the recognizance; and if the juſtice only ſign, without ſealing it, it is well enough, eſpecially where the recognizance is without ſeal.

Or, the releaſe may be by it ſelf, thus:

Weſtmorland. BE *it remembred, that* A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *came before me* William Tatham, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, at* Aſkham *in the ſaid county, and there remiſed and freely releaſed to* A. O. *of* ——— *in the ſaid county, yeoman, the ſurety of the peace* [or, *good behaviour*] *by him the ſaid* A. I. *before me prayed againſt the ſaid* A. O. *Given* &c.

Or, if it is before another juſtice, then ſay, ——— *the ſurety of the peace* [or, *good behaviour*] *which he has againſt* A. O. *of* ——— *in the ſaid county, yeoman. Given* &c.

But note, that none of theſe releaſes will diſcharge the recognizance, or the appearance of the party bound there-

by;

by; but that he muſt appear according to the condition of the recognizance, for the ſafeguard of his recognizance.

Liberate to diſcharge one committed for want of ſureties.

Weſtmorland. STanwix Nevinſon, *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace in the county aforeſaid, To the keeper of his majeſty's gaol at* ——— *in the ſaid county, greeting.*

Foraſmuch as A. O. *in the priſon of our ſaid lord the king, in your cuſtody now being, at the ſuit of* A. I. *of* ——— *in the ſaid county, yeoman, for the want of his finding ſufficien ſureties for his perſonal appearance at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, and for his keeping the peace* [or, *being of the good behaviour*] *in the mean time, towards our ſaid lord the king, and all his liege people, and eſpecially towards the ſaid* A. I. *hath found before me ſufficient ſureties, to wit,* A. S. *of* ——— *yeoman, and* B. S. *of* ——— *yeoman, either of which hath undertaken for the ſaid* A. O. *under the pain of* 20l. *and he the ſaid* A. O. *hath undertaken for himſelf under the pain of* 40l. *that he the ſaid* A. O. *ſhall and will perſonally appear at the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, and ſhall well and truly keep the peace* [or, *be of the good behaviour*] *in the mean time, towards our ſaid lord the king, and all his liege people, and eſpecially towards the ſaid* A. I. *Therefore on the behalf of our ſaid lord the king I do command you, that if the ſaid* A. O. *do remain in the ſaid gaol, for the ſaid cauſe, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and ſuffer him to go at large, and that, upon the pain that will fall thereon. Given under my ſeal, at* Newby Hall *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of our ſaid lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king.*

Surgeons. See **Phyſicians.**
Suſpicion. See **Arreſt, Warrant.**
Swans. See **Game.**

Swearing.

1. BY the canons of the church, If any offend their brethren by ſwearing, the churchwardens ſhall preſent them; and ſuch notorious offenders ſhall not be admitted to the holy communion, till they be reformed. *Can.* 109. Puniſhment in the ſpiritual court.

And by the ſtatute of the 19 *G.* 2. *c.* 21. It is enacted as follows:

2. If any perſon ſhall profanely curſe or ſwear, and be thereof convicted on confeſſion, or oath of one witneſs, before one juſtice (or mayor), he ſhall forfeit as follows: That is to ſay, Pecuniary penalty.

Every day labourer, common ſoldier, or common ſeaman, 1 *s.*

Every other perſon, under the degree of a gentleman, 2 *s.*

And every perſon of or above the degree of a gentleman, 5 *s.*

And for a ſecond offence after conviction, double; and for every other offence after a ſecond conviction, treble. *ſ.* 1.

Which ſaid penalties ſhall go to the poor of the pariſh where the offence was committed. *ſ.* 10.

3. If ſuch perſon ſhall curſe or ſwear in the preſence and hearing of a juſtice (or mayor); he ſhall convict him without other proof. *ſ.* 2. Swearing in preſence of a juſtice.

4. If in the preſence and hearing of a conſtable, if he is *unknown* to ſuch conſtable, the ſaid conſtable ſhall ſeize and carry him forthwith before the *next* juſtice (or mayor of a town corporate), who ſhall convict him upon the oath of ſuch conſtable; In preſence of a conſtable.

If he is *known* to ſuch conſtable, he ſhall ſpeedily make information before ſome juſtice (or mayor) in order that he may be convicted. *ſ.* 3.

5. So that the conſtable, if it is in his hearing, is required to proſecute; but any other perſon alſo may proſecute if he pleaſes. In preſence of any other.

6. And ſuch juſtice (or mayor) ſhall immediately on ſuch information on the oath of any conſtable, or of any other perſon, cauſe the offender to appear before him; and on proof of ſuch information, convict him: and if he ſhall not immediately pay down the penalty, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit Commitment on not paying the penalty.

mit him to the houſe of correction, to be kept to hard labour for ten days. *ſ.* 4.

On not paying the charges.

7. Alſo the charges of the information and conviction, ſhall be paid by the offender, if able, over and above the penalties; which charges ſhall be aſcertained by ſuch juſtice (or mayor). *ſ.* 11.

But for the information, ſummons, and conviction, no more ſhall be paid to the juſtice's clerk, than 1*s.* *ſ.* 15.

And if he ſhall not immediately pay ſuch charges, or give ſecurity to the ſatisfaction of ſuch juſtice (or mayor); he may commit him to the houſe of correction, to be kept to hard labour for ſix days, over and above ſuch time for which he may be committed for non-payment of the penalties; and in ſuch caſe, no charges of information and conviction ſhall be paid by any perſon. *ſ.* 11.

Soldier or ſeaman.

8. But if ſuch ſoldier or ſeaman ſhall not ſo pay or ſecure the penalty, and alſo the coſts of the information, ſummons, and conviction; he ſhall, inſtead of being committed to the houſe of correction, be ordered to be publickly ſet in the ſtocks for one hour for every ſingle offence, and for any number of offences whereof he ſhall be convicted at one and the ſame time two hours. *ſ.* 5.

Form of the conviction.

9. The conviction ſhall be in the words and form following;

Be it remembred, that on the ——— day of ——— in the ——— year of his majeſty's reign, A. B. *was convicted before me (one of his majeſty's juſtices of the peace for the county, riding, diviſion, or liberty aforeſaid; or before me ——— mayor of the city or town of ——— within the county of ———) of ſwearing one or more profane oath or oaths, or of curſing one or more profane curſe or curſes. Given under my hand and ſeal the day and year aforeſaid.* ſ. 8.

Certiorari.

10. Which conviction ſhall not be removed by certiorari. *ſ.* 9.

Conviction to be filed.

11. And the juſtice (or mayor) ſhall cauſe the conviction to be fairly wrote over upon parchment, and returned to the next general or quarter ſeſſions, to be filed by the clerk of the peace, and kept amongſt the records. *ſ.* 9.

Penalty on a juſtice omitting his duty.

12. If any juſtice (or mayor) ſhall omit his duty, in the execution of this act, he ſhall forfeit 5 *l.* half to the poor where he ſhall reſide, and half to him that ſhall ſue in any court of record. *ſ.* 6.

Penalty on the conſtable.

13. Conſtable omitting his duty, ſhall on conviction, on oath of one witneſs, before one juſtice (or mayor), forfeit 40 *s.* to be levied by diſtreſs, half to the informer, and

half

half to the poor; and if he have not ſufficient goods whereon to levy, ſuch juſtice (or mayor) may commit him to the houſe of correction, to be kept to hard labour for one month. *ſ.* 7.

14. And this act ſhall be publickly read four times in the year, in all churches and chapels, by the miniſter immediately after morning or evening prayer, on the *ſundays* next after *Mar.* 25. *June* 24. *Sep.* 29. and *Dec.* 25. on pain of 5 *l.* for every offence, to be levied by diſtreſs, by warrant of a juſtice (or mayor). *ſ.* 14. Act to be read in the church.

15. But no perſon ſhall be proſecuted for any offence againſt this act, unleſs it be within 8 days after the offence committed. *ſ.* 13. Limitation of actions.

16. By the 22 *G.* 2. *c.* 33. Perſons belonging to his majeſty's ſhips of war, guilty of profane oaths or curſes, ſhall incur ſuch puniſhment as a court martial ſhall impoſe. Navy.

Information.

Weſtmorland. THE *information of* A. I. *of* ——— *in the county aforeſaid, yeoman, made on oath this* —— *day of* ——— *in the* ——— *year of the reign of* ——— *before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county: Who ſaith,*

That on ——— *the* ——— *day of* ——— *now laſt paſt, at* ——— *in the pariſh of* ——— *in the county aforeſaid, he heard* A. O. *of* ——— *in the ſaid county, yeoman, ſwear one profane oath* [or, *curſe one profane curſe*] *in theſe words, to wit,* &c.

Summons.

Weſtmorland. { To the conſtable of ———.

WHEREAS *information hath this day been made before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, upon the oath of* A. I. *of* —— *yeoman, that on* ——— *the* ——— *day of this preſent month of* ——— *he heard* A. O. *of* ——— *in the ſaid county, yeoman, at* ——— *in the pariſh of* ——— *in the ſaid county, ſwear one profane oath* [or, *curſe one profane curſe*] *Theſe are therefore to command you to cauſe the ſaid* A. O. *forthwith to appear before me to anſwer the premiſſes, and to be further dealt withal according to law. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* —— *in the* ——— *year of* ———.

Commitment.

Commitment.

Weſtmorland. { To the conſtable of——in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. O. *of* ——— *in the ſaid county, day labourer, is and ſtands convicted this day, before me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, of ſwearing one profane oath, on the* ——— *day of this preſent month of* —— *at* —— *in the pariſh of* —— *in the ſaid county, whereby he hath forfeited the ſum of* 1 s. *to the poor of the ſaid pariſh of* —— *And whereas the ſaid* A. O. *hath refuſed and doth refuſe to pay down the ſaid ſum of* 1 s. *for the uſe of the poor aforeſaid, and alſo hath refuſed, and doth refuſe to give ſatisfactory ſecurity to pay the ſame; Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof together with this warrant: And I do hereby command you the ſaid keeper to receive him the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and there to detain and keep him to hard labour for the ſpace of ten days. And for ſo doing this ſhall be your ſufficient warrant. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

If he alſo refuſeth to pay the charges, theſe words may be added ——— *ſatisfactory ſecurity to pay the ſame; And whereas the ſaid* A. O. *hath likewiſe refuſed and doth refuſe to pay the ſum of* 1 s. *which I have ſettled and aſcertained as and for the charges of the proceedings againſt him touching the premiſſes, and hath refuſed and doth refuſe to give ſatisfactory ſecurity to pay the ſame: Theſe are therefore to require you* ——— *for the ſpace of* 16 *days* ———

Sweets. See **Exciſe.**

Tanners. See **Leather.**
Taylors. See **Buttons.**
Tea. See **Exciſe.**
Tenant. See **Diſtreſs.**

Thames.

CONCERNING regulations of the navigation on the river of *Thames*, the ſame being not general, it ſhall be ſufficient only to mention the ſeveral acts touching the ſame; *viz.*

2 & 3 *P. & M. c.* 16.	2 *G.* 2. *c.* 26.
1 *J. c.* 16.	4 *G.* 2. *c.* 24.
6 & 7 *W. c.* 16.	5 *G.* 2. *c.* 20.
11 & 12 *W. c.* 21.	6 *G.* 2. *c.* 29.
4 *An. c.* 13.	10 *G.* 2. *c.* 31.
9 *An. c.* 26.	24 *G.* 2. *c.* 8.

Theft. See **Larceny.**
Theftbote. See **Felony.**
Threatning. See **Surety.**

Tiles.

EVERY perſon uſing the occupation of making tile, ſhall make it good, ſeaſonable, and ſufficient, and well whited and anealed. And the earth whereof it ſhall be made, ſhall be digged and caſt up before the firſt of *November*, and ſtirred and turned before the firſt of *February*, and not wrought before the firſt of *March*; and before it be put to making of tile, ſhall be truly wrought and tried from ſtones; and the veins called malin or marle, and chalk, ſhall be ſevered from the earth whereof the tile is made: And plain tile ſhall be 10½ inches long, 6¼ broad, and half an inch and half a quarter thick; roof tile or creſs-tile, 13 inches long, half an inch and half a quarter thick, with convenient deepneſs; gutter tile and cover tile, 10½ inches long, with convenient thickneſs, breadth and deepneſs. And if any perſon ſet to ſale any tile made contrary to this ordinance, he ſhall forfeit to the buyer double value, and make fine and ranſom at the king's will. And every perſon that feeleth himſelf grieved, and will ſue, may have an action of debt againſt the offender. And the plaintiff in every ſuch action may recover his coſts. And the juſtices of the peace, and every of them, may hear and determine by their diſcretions, as well by examination as otherwiſe,

offences againſt this ordinance, as well at the king's ſuit as the party's who ſhall be grieved. And if it appear to the juſtices, or any of them, that any perſon hath offended herein, then the ſame juſtices ſhall aſſeſs upon the offender no leſs fine than for every 1000 of plain tile 5 *s.* for every 100 of roof tile 6 *s.* 8 *d.* for every 100 of corner tile or gutter tile 2 *s.* And the ſaid juſtices may call before them perſons having knowledge in making of tile, to ſearch and examine the digging, turning, parting, making, whiting, and anealing. And no perſon ſhall put to ſale any tile before it be ſearched, on pain of forfeiting the ſame. And if the ſearchers find any defaulters, they ſhall preſent them at the next ſeſſions; which preſentment ſhall be as effectual as that of 12 men. And the ſearcher ſhall have of the tile maker for his labour, for every 1000 plain tile ſearched 1 *d.* for every 100 roof tile an half penny, and for every 100 of corner tile and gutter tile a farthing. Searcher making default ſhall forfeit 10 *s.* to the king: And the juſtices may hear and determine the defaults of the ſearchers, in like manner as of the tile makers. 17 *Ed.* 4. *c.* 4.

Tin. See **Pewter.**

Tithes.

I. Of ſmall tithes due from any perſon.
II. Of great and ſmall tithes and other church rates and payments, due from quakers only.
III. Of contempts for tithes in the ſpiritual court.

I. Of ſmall tithes due from any perſon.

THE books in general do confound the acts of the 7 & 8 *W.* *c.* 6. concerning ſmall tithes only, due from any perſon whatſoever (whether quaker or not being no way material); and the 7 & 8 *W.* *c.* 34. and 1 *G.* *ſt.* 2. *c.* 6. concerning quakers tithes only, great and ſmall, and their other church dues. Nevertheleſs, the acts are intirely diſtinct in themſelves, and the method of proceeding in the one caſe and in the other is different in almoſt every inſtance.

I have

I have therefore taken care to extricate them out of this confuſion, by inſerting them ſeparately, and by drawing diſtinct forms upon each, according to the different methods of proceeding.

1. And firſt, as to the ſmall tithe act, 7 & 8 *W.* *c.* 6.— In this caſe the proſecution muſt be for ſmall tithes only, or compoſitions for the ſame; or for offerings, oblations, or obventions: and not otherwiſe. *ſ.* 1. For what tithes.

And they muſt not amount to above 40*s.* a year from any one perſon. *id.*

And they muſt have become due within two years next before the complaint. *ſ.* 6.

And they muſt not be in *London*, nor in any place where the tithes are otherwiſe ſettled by act of parliament. *ſ.* 5.

And they muſt not have been begun to be ſued for in the exchequer, or eccleſiaſtical court. *ſ.* 14.

2. Of theſe demand muſt firſt be made. *ſ.* 1. Demand of the tithes.

3. And if any perſon ſhall fail in the payment of the ſame, by the ſpace of 20 days after ſuch demand; the perſon to whom the ſame ſhall be due, may make complaint in writiug to two juſtices of the peace, neither of whom is patron of the church or chapel, nor intereſted in the tithes. *ſ.* 1. Complaint.

H. 6 *G.* *K.* and *Furneſs.* Order for non-payment of ſmall tithes was quaſhed, becauſe ſaid only *upon complaint* generally, and the ſtatute requires the complaint to be *in writing*. *Str.* 264.

4. Hereupon the ſaid juſtices ſhall ſummon in writing under their hands and ſeals, by reaſonable warning, every perſon againſt whom ſuch complaint ſhall be made. *ſ.* 2. Summons.

5. And after appearance, or default of appearance (the warning or ſummons being proved upon oath), the ſaid juſtices ſhall proceed to hear and dertermine the complaint. *ſ.* 2. Hearing.

6. And if on hearing the ſame, any perſon ſhall inſiſt on a preſcription, compoſition, *modus decimandi*, agreement, or title, whereby he ought to be freed from payment, and deliver the ſame in writing to the juſtices, ſubſcribed by him, and ſhall then give the party complaining ſecurity to the ſatisfaction of the juſtices, to pay all ſuch coſts and damages, as upon a trial at law ſhall be given againſt him; in that caſe, the juſtices ſhall forbear to give judgment. *ſ.* 8. Pleading a modus.

7. Otherwiſe, they ſhall in writing under their hands and ſeals, adjudge the caſe; and give ſuch compenſation, Adjudication.

as they ſhall judge to be juſt and reaſonable; and alſo ſuch coſts and charges, not exceeding 10*s.* as upon the merits of the cauſe ſhall appear juſt.

Alſo they may give coſts, not exceeding 10*s.* to the party proſecuted, if they ſhall find the complaint to be falſe and vexatious. *ſ.* 12.

Demand of the ſum adjudged.

8. Of which adjudication notice ſhall be given to the party complained of. *ſ.* 3.

Diſtreſs and ſale.

9. And if any perſon ſhall refuſe or neglect by the ſpace of ten days after ſuch notice given, to pay or ſatisfy ſuch ſum adjudged; the conſtables and churchwardens, or one of them, ſhall by warrant under the hands and ſeals of the ſaid juſtices, diſtrain his goods, and after detaining them three days (if the money, together with reaſonable charges for making and detaining the diſtreſs, be not paid in the mean time) ſhall publickly ſell the ſame, and pay to the party complaining the ſum adjudged, retaining to themſelves ſuch reaſonable charges for making and keeping the diſtreſs, as the ſaid juſtices ſhall think fit. *ſ.* 3.

But by the 27 *G.* 2. *c.* 20. The diſtreſs ſhall be detained not leſs than four days, nor more than eight; and the officers may deduct the charges not only of *making* and *keeping* the diſtreſs, but alſo of the *ſale:* but then the juſtices cannot by the ſaid act of the 27 *G.* 2. adjuſt the *quantum* of the charges of *ſale*, as they may by this act the charges of *making* and *keeping* the diſtreſs.

Diſtreſs out of the county.

10. And if any perſon againſt whom judgment ſhall be obtained, ſhall remove out of the county before the ſum ſhall be levied; the juſtices who made the judgment, or one of them, ſhall certify the ſame under hand and ſeal, to any juſtice of ſuch other county, who ſhall by his warrant order the ſame to be levied in like manner. *ſ.* 10.

Appeal.

11. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; and if they confirm the judgment, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs, as to them ſhall ſeem juſt and reaſonable. *ſ.* 7.

Certiorari.

12. And no proceedings herein ſhall be removed by certiorari, or otherwiſe; unleſs the title of ſuch tithes, oblations, or obventions ſhall be in queſtion. *ſ.* 7.

Adjudication to be recorded.

13. Finally, Every perſon who ſhall obtain any judgment, or againſt whom any ſuch judgment ſhall be obtained, ſhall cauſe the ſame to be inrolled at the next ſeſſions; for which the clerk of the peace ſhall have 1*s.* *ſ.* 9.

II. Of great or ſmall tithes, and other church rates and payments, due from quakers only.

1. This is upon the acts of the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.—And the proſecution in this caſe may be, for any tithes or church rates, or any cuſtomary or other rights, dues, or payments belonging to any church or chapel, which of right by law and cuſtom ought to be paid for the ſtipend or maintenance of any miniſter or curate officiating in any church or chapel. For what tithes and dues.

Provided that the ſame do not exceed the value of 10*l.*—But no time is limited, within which the ſame ſhall become due.

2. And where any quaker ſhall refuſe to pay or compound for the ſame, any parſon, vicar, curate, farmer, or proprietor of ſuch tithes, or any churchwarden or chapelwarden, or other perſon who ought to have, receive, or collect, any ſuch tithes, rates, dues, or payments, may make complaint to any two juſtices, other than ſuch as is patron of the church or chapel, or any way intereſted in the tithes. Complaint.

Note; here is no number of days limited, between the time of refuſal and the complaint; nor is it hereby required that ſuch complaint ſhall be in writing.

3. Upon which complaint the ſaid juſtices ſhall ſummon in writing under their hands and ſeals, by reaſonable warning, ſuch quaker. Summons.

4. And after appearance, or on default of appearance (the warning or ſummons being proved before them upon oath), they may proceed to examine on oath the truth of the complaint, and to aſcertain and ſtate what is due and payable. Hearing.

5. And by order under their hands and ſeals, they may direct and appoint the payment thereof; ſo as the ſum ordered (as is aforeſaid) do not exceed 10*l.* And alſo ſuch coſts and charges, as they ſhall think reaſonable, not exceeding 10*s.* Adjudication.

6. And on refuſal to pay, it ſhall be lawful for any one of the two *next* juſtices, by warrant under his hand and ſeal, to levy the ſame by diſtreſs and ſale, rendring the overplus, the neceſſary charges of diſtraining being thereout firſt deducted and allowed by the ſaid juſtices; unleſs it be in the caſe of appeal, and then no warrant of diſtreſs ſhall be granted, till after the appeal ſhall be determined. Diſtreſs and ſale.

Note again, here is no time limited between the notice of the adjudication, and the making out the warrant of diſtreſs. So that upon demand and refuſal, it ſeemeth that

the warrant of diſtreſs may be made out immediately, unleſs at the time of ſuch demand, the party ſhall give notice of an appeal.

Alſo, here is no time limited for detaining the diſtreſs, nor charges allowed for the keeping of it; ſo that it may be ſold immediately.

And by the ſtatute of the 27 *G.* 2. *c.* 20. which in all other caſes gives the juſtices power, in their warrant of diſtreſs, to order the goods diſtrained to be detained for a certain time, not leſs than four days, the *tithes* and *church rates* of quakers (altho' not thoſe other dues and payments) abovementioned are excepted.

Alſo, it is obſervable here, that the ſtatute of the 7 & 8 *W.* limits the proceedings to the two *next* juſtices (not intereſted); and the ſtatute of the 1 *G.* enlarges the ſame to *any* two juſtices (not intereſted) as to the complaint, ſummons, and order, but reſtrains the *diſtreſs* to the limitations in the ſtatute of the 7 & 8 *W.* that is, to one of the two *next* juſtices as aforeſaid; which poſſibly may have been an overſight; for it may happen hereupon, that neither of the two juſtices which made the order, can inforce the execution of it by diſtreſs. To prevent which inconvenience, it may be proper that *one* at leaſt of the juſtices complained to, be one of the two next juſtices (not intereſted.)

Appeal. 7. Any perſon aggrieved by the judgment of the two juſtices, may appeal to the next ſeſſions; where if the judgment ſhall be affirmed, they ſhall decree the ſame by order of ſeſſions, and give coſts againſt the appellant, to be levied by diſtreſs and ſale, as to them ſhall ſeem reaſonable.

Certiorari. 8. And no proceedings herein ſhall be removed by certiorari, or otherwiſe, unleſs the title of ſuch tithes ſhall be in queſtion.

III. Of contempts for tithes in the ſpiritual court.

Contempt of proceſs. 1. By the 27 *H.* 8. *c.* 20. If the eccleſiaſtical judge ſhall, for any contempt, contumacy, diſobedience, or other miſdemeanor, of any defendant in the caſe of tithes, make information and requeſt to the juſtices of the peace of the ſhire where the offender dwelleth, to aſſiſt him to order and reform any ſuch perſon; two of the ſaid juſtices (1 *Q.*) may cauſe the perſon to be attached, and commit him to ward, till he ſhall have found ſufficient ſurety, to be bound to the king by recognizance or otherwiſe, to give due obedience to the proceſs, proceedings, decrees, and ſentences of the eccleſiaſtical court where the ſuit ſhall be. *ſ.* 1.

2. And

2. And by the 32 *H.* 8. *c.* 7. If any perſon, after ſentence definitive given againſt him in the eccleſiaſtical court, ſhall obſtinately and wilfully refuſe to pay his tithes, or duties, or ſums of money adjudged for the ſame; two juſtices (1 *Q.*) may, upon information, certificate, or complaint in writing by the eccleſiaſtical judge, cauſe the party refuſing to be attached, and committed to the next gaol, till he ſhall have found ſufficient ſureties by recognizance or otherwiſe, to perform the ſaid definitive ſentence and judgment. *ſ.* 4. Contempt after judgment.

Complaint for ſmall tithes; on the 7 & 8 *W.* *c.* 6.

TO J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the county of* ——— A. I. *of* ——— *in the ſaid county, clerk, humbly complaineth,*

That he the ſaid complainant did by the ſpace of 20 *days and upwards before the day of the date hereof, demand of* A. O. *of* ——— *in the pariſh of* ——— *in the county aforeſaid, yeoman, the ſmall tithes, offerings, oblations, and obventions, juſtly become due within two years now laſt paſt, from him the ſaid* A. O. *unto him the ſaid complainant, to the value of* 4l. *and that he the ſaid* A. O. *did upon the ſaid demand refuſe, and doth yet refuſe, to pay or compound for, and hath not paid nor compounded for the ſame, or any part thereof: The ſaid complainant therefore prayeth ſuch redreſs in the premiſſes, as to you ſhall ſeem meet, and as to the law doth appertain. Signed the* ——— *day of* ——— *in the* ——— *year of* ———.

A. I.

Summons for ſmall tithes; on the 7 & 8 *W.* *c.* 6.

Weſtmorland. { To the conſtable of ———.

WHEREAS *complaint in writing hath been made unto us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *of* ——— *in the ſaid county, clerk, that* A. O. *of* ——— *in the pariſh of* ——— *in the ſaid county, yeoman, hath for above the ſpace* 20 *days before the time of the ſaid complaint ſo made unto us as aforeſaid, refuſed to compound for, or to pay unto him the ſaid* A. I. *and hath not yet compounded for, nor paid, the ſmall tithes, offerings, oblations, and obventions, juſtly due from him the ſaid* A. O. *to him the ſaid* A. I. *Theſe are therefore to command you forthwith, upon ſight hereof, to ſummon the ſaid*

A. O. *to appear before us at the house of* ——— *in* ——— *in the said county, on* saturday *the* ——— *day of this present month of* ——— *at the hour of* ——— *in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premisses. Given under our hands and seals, at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of* ———.

Order for payment of small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. WHEREAS *complaint in writing hath been made unto us* ——— *two of his majesty's justices of the peace for the said county, by* A. I. *vicar of the parish of* ——— *in the said county, that* A. O. *of* ——— *in the said parish of* ——— *in the county aforesaid, yeoman, did refuse for the space of* 20 *days next before the time of the said complaint so made unto us as aforesaid, to pay or compound for his small tithes, offerings, oblations, and obventions, arising in the said parish of* ——— *and due to him the said* A. I. *We therefore the said justices, being neither of us patron of the parish church of* ——— *aforesaid, nor any ways interested in any of the said tithes, offerings, oblations, or obventions, having duly summoned the said* A. O. *before us, and having duly examined the truth and justice of the said complaint upon oath, do find that there is justly due from the said* A. O. *to the said* A. I. *the sum of* 4 l. *being the value of the said tithes, offerings, oblations, and obventions, become due within two years last past; and do therefore adjudge and order the aforesaid* A. O. *to pay or cause to be paid unto the said* A. I. *the aforesaid sum of* 4 l. *and also the sum of* 10 s. *for the costs and charges of the said* A. I. *in prosecuting the said* A. O. *for the recovery of his said just dues. Given under our hands and seals at* ——— *in the said county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Distress for small tithes; on the 7 & 8 *W. c.* 6.

Westmorland. { To the constable of ——— in the said county, and to the churchwardens of the parish of ——— in the said county, and to every of them.

WHEREAS *upon the complaint in writing of* A. I. *vicar of the parish of* ——— *aforesaid, in the county aforesaid,* A. O. *of* ——— *in the said parish in the county aforesaid,*

aforeſaid, yeoman, hath been duly ſummoned to appear before us ——— two of his majeſty's juſtices of the peace for the ſaid county, to be examined for the non-payment of his ſmall tithes, offerings, oblations, and obventions, due unto the ſaid A. I. *And whereas we the ſaid juſtices, being neither of us patron of the pariſh church of ——— aforeſaid, nor any way intereſted in any of the ſaid tithes, offerings, oblations, or obventions, have duly examined the truth and juſtice of the ſaid complaint, and have ordered him the ſaid* A. O. *to pay unto the ſaid* A. I. *the ſum of* 4 l. *being the value of the ſmall tithes, offerings, oblations, and obventions become due from him the ſaid* A. O. *to him the ſaid* A. I. *within two years next before the ſaid complaint ſo made unto us as aforeſaid, together with the ſum of* 10 s. *for the coſts and charges of the ſaid* A. I. *for the recovery of his ſaid juſt dues; making in the whole the ſum of* 4 l. 10 s. *And whereas it appeareth unto us the ſaid juſtices, that the ſaid* A. O. *had due notice of our ſaid order for the ſpace of ten days and upwards before the day of the date hereof, but hath refuſed to pay, and hath not yet paid the ſaid ſum of* 4 l. 10 s. *nor any part thereof: Theſe are therefore to command you, jointly and ſeverally, that you, or ſome, or one of you, do forthwith diſtrain the goods and chattels of the ſaid* A. O. *and in caſe the ſaid ſum of* 4 l. 10 s. *together with your reaſonable charges of making and detaining the ſaid diſtreſs, be not paid or tendred to be paid by him the ſaid* A. O. *in* [*four*] *days next after ſuch diſtreſs made, that then you do make publick ſale of the ſaid goods and chattels ſo diſtrained as aforeſaid, and out of the money ariſing from ſuch ſale, that you pay or cauſe to be paid unto him the ſaid* A. I. *the ſaid ſum of* 4 l. 10 s. *and thereout alſo deduct and detain your reaſonable charges of making, keeping and ſelling the ſaid diſtreſs; and if any overplus ſhall remain, after ſuch payment and deduction as aforeſaid, that then you do render the ſame unto him the ſaid* A. O. *upon demand. Given under our hands and ſeals at ——— in the ſaid county, the ——— day of ——— in the ——— year ———.*

Summons of a quaker for tithes; on the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.

Weſtmorland. { To the conſtable of —— in the ſaid county.

WHEREAS A I. *clerk, rector of the pariſh church of ——— in the ſaid county, hath complained unto us* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of ——— in the*

pariſh of ——— *aforeſaid, in the county aforeſaid, yeoman, being a perſon commonly called a quaker, hath refuſed to pay unto him the ſaid* A. I. *or to compound for the tithes, and other rights, dues, and payments belonging to the church of* ——— *aforeſaid, and juſtly due to him the ſaid* A. I. *from him the ſaid* A. O. *Theſe are therefore to require you forthwith to ſummon the ſaid* A. O. *to appear before us at the houſe of* ——— *in* ——— *in the ſaid county, on* ſaturday *the* ——— *day of this preſent month of* ——— *at the hour of* ——— *in the forenoon of the ſame day, to anſwer unto the ſaid complaint. And be you then there to certify what you ſhall have done in the premiſſes. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Order for quakers tithes; on the 7 & 8 *W.* *c.* 34. and 1 *G.* *ſt.* 2. *c.* 6.

Weſtmorland. WHEREAS *complaint hath been made unto us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, by* A. I. *vicar of the pariſh of* ——— *in the ſaid county, that* A. O. *of the pariſh of* ——— *aforeſaid in the county aforeſaid, being a perſon commonly called a quaker, hath refuſed to pay to, or to compound with him the ſaid* A. I. *for his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforeſaid, and juſtly due unto him the ſaid* A. I. *We therefore the ſaid juſtices, being neither of us patron of the pariſh church of* ——— *aforeſaid, nor any way intereſted in any of the ſaid tithes, rights, dues, or other payments, having duly ſummoned the ſaid* A. O. *before us, and having alſo duly examined the truth of the ſaid complaint upon oath, do find that there is juſtly due for the ſame from the ſaid* A. O. *to him the ſaid* A. I. *the ſum of* 10l. *and do order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the aforeſaid ſum of* 10l. *And we do alſo order and appoint the aforeſaid* A. O. *to pay or cauſe to be paid unto him the ſaid* A. I. *the further ſum of* 10s. *for ſuch coſts and charges concerning the premiſſes as upon the merits of the cauſe do appear to us juſt and reaſonable. Given under our hands and ſeals at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Diſtreſs for quakers tithes; on the 7 & 8 *W. c.* 34. and 1 *G. ſt.* 2. *c.* 6.

Weſtmorland. { To the conſtable of ———.

WHEREAS *upon the complaint of* A. I. *vicar of the pariſh church of* ——— *in the ſaid county,* A. O. *of* ——— *in the pariſh aforeſaid, in the county aforeſaid, yeoman, being a perſon commonly called a quaker, hath been duly ſummoned to appear before* J. P. *and* K. P. *eſquires, two of his majeſty's juſtices of the peace in and for the ſaid county, to be examined for non-payment of his tithes, and other rights, dues, and payments, belonging to the church of* ——— *aforeſaid, and due unto him the ſaid* A. I. *from him the ſaid* A. O. *And whereas the ſaid juſtices, upon examination thereof, have ordered him the ſaid* A. O. *by writing under their hands and ſeals, to pay unto the ſaid* A. I. *the ſum of* 10 l. *for ſuch his tithes, and other rights, dues, and payments as aforeſaid, and moreover the ſum of* 10 s. *for the charges of him the ſaid* A. I. *in recovering the ſame, making in the whole the ſum of* 10 l. 10 s. *And whereas it appeareth unto me* J. P. *eſquire, being one of the ſaid juſtices, and alſo being one of the two next juſtices to the pariſh church of* ——— *aforeſaid, in the county aforeſaid, not being patron of the ſaid church, nor any way intereſted in any of the ſaid tithes, or other rights, dues, or payments, that the ſaid* A. O. *hath had due notice of the ſaid order, but hath refuſed, and doth refuſe to pay, and hath not paid, the ſaid ſum of* 10 l. 10 s. *nor any part thereof: Theſe are therefore to authorize and command you, that you do forthwith levy the aforeſaid ſum of* 10 l. 10 s. *by diſtreſs and ſale of the goods and chattels of him the ſaid* A. O. *and out of the money ariſing from ſuch ſale, that you do pay or cauſe to be paid unto him the ſaid* A. I. *the ſaid ſum of* 10 l. 10 s. *and thereout alſo deduct your neceſſary charges of diſtraining. And if any overplus ſhall remain, after ſuch payment and deduction as aforeſaid, that you do render the ſame unto him the ſaid* A. O. *Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Tobacco.

Concerning the exporting of tobacco pipe clay, ſee Woollen Manufacture.

Planting tobacco.

1. NO perſon ſhall plant any tobacco; on pain of forfeiting the ſame, or the value thereof, or 40 *s.* for every rod or pole of ground planted with it, half to the king, and half to him that ſhall ſue in any court of record. 12 *C.* 2. *c.* 34. *ſ.* 1. And beſides the ſaid penalty, he ſhall moreover forfeit 10 *l.* for every rod or pole; one third to the king, one third to the poor, and one third to him that ſhall ſue in like manner. 15 *C.* 2. *c.* 7. *ſ.* 18.

And by the ſaid act of the 15 *C.* 2. *c.* 7. (which by the 5 *G.* *c.* 11. is continued along with the act of tonnage and poundage of the 12 *C.* 2. *c.* 4.) the juſtices ſhall a month before every ſeſſions, iſſue their warrants to all high and petty conſtables, to ſearch what tobacco is planted, cured, or made, and by whom; and to make preſentment in writing on oath at the next ſeſſions, of the names of ſuch perſons as have planted, cured, or made any tobacco, and what quantity of land is or was planted, and who are the tenants or occupiers thereof (who ſhall alſo be deemed the planters). *ſ.* 2.

Which preſentment ſhall be filed by the clerk of the peace in open ſeſſions; and after ſuch filing, ſhall be a ſufficient conviction in law of the perſons preſented, unleſs ſuch perſon preſented (having notice given to him of the preſentment by delivery of a copy thereof to him, or leaving ſuch copy at his uſual place of abode in the preſence of one witneſs, ten days before the next quarter ſeſſions) ſhall at the next ſeſſions after ſuch notice, traverſe the preſentment, and find ſureties for proſecuting and trying ſuch traverſe at the quarter ſeſſions next after ſuch traverſe entred or made. *ſ.* 3.

And all conſtables, bailiffs, and other publick officers, ſhall within 14 days after warrant from two juſtices, calling to their aſſiſtance whom they ſhall find neceſſary, pluck up, burn, conſume, tear in pieces, and utterly deſtroy all tobacco ſeed, plant, and leaf planted, ſowed, or growing in any field or ground. *ſ.* 4.

And if any tobacco ſhall be ſuffered to grow, or be conſumed in ſeed, plant, or leaf, by the ſpace of 14 days after receipt

receipt of ſuch warrant by the ſaid conſtables or other officers; they ſhall for every offence forfeit 5 *s.* for every rod, perch, or pole of ground planted with tobacco, and ſo proportionably for a greater or leſſer quantity, half to the king, and half to him that ſhall ſue. *ſ.* 5.

And if any ſhall refuſe or neglect to aſſiſt the conſtable, he ſhall on conviction before two juſtices, forfeit 5 *s.* to be levied by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for one week. *ſ.* 6.

And if any perſon ſhall reſiſt the conſtable or other perſon in the due execution hereof, he ſhall, on conviction before two juſtices, forfeit 5 *l.* by warrant of the ſaid juſtices by diſtreſs; and if no diſtreſs can be found, to be committed to the common gaol for three months. *ſ.* 7.

But nothing herein ſhall hinder planting the ſame in gardens for phyſick or chirurgy, ſo as the quantity planted exceed not half a pole of ground. 12 *C.* 2. *c.* 34. *ſ.* 4. 22 & 23 *C.* 2. *c.* 26. *ſ.* 9.

2. Every perſon who ſhall cut any walnut, hop, ſycomore, or other leaves, or any other herbs, plants, or materials (not being tobacco leaves or plants), or ſhall colour or cure any ſuch, to make the ſame reſemble tobacco; or ſhall ſell the ſame mixed or unmixed for tobacco,——ſhall forfeit 5 *s.* a pound, half to the king (charges of the proſecution firſt deducted), and half with full coſts to him who ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 1. Adulterating tobacco and ſnuff.

And every perſon who ſhall make, mix, or colour any ſnuff, with oker, umber, or other colouring, except water tinged with *Venetian* red only; or ſhall mix with ſnuff, any fuſtick or yellow ebony, touchwood, or other wood, or any dirt, ſand, or ſmall tobacco ſifted from tobacco,—ſhall forfeit the ſame, and 3 *l.* for every pound weight, half to the king, and half to him that ſhall ſue. 1 *G. ſt.* 2. *c.* 46. *ſ.* 7. 5 *G. c.* 11. *ſ.* 22.

And all ſuch leaves and other materials, and all engines, utenſils, and tools for working the ſame, may be ſearched for and ſeized, by warrant of three commiſſioners of the treaſury or of the cuſtoms. 1 *G. ſt.* 2. *c.* 46. *ſ.* 3.

But no houſe or warehouſe ſhall be opened to ſearch for or ſeize the ſame, but at ſeaſonable hours, and not without a ſpecial warrant from two juſtices of the peace. *ſ.* 4.

And the ſaid materials or engines found and ſeized within ſix miles of any port, ſhall be brought to the next cuſtomhouſe warehouſe; and if at a greater diſtance from any port,

port, ſhall be ſecured by order of two juſtices at the king's charge, till the cauſe of ſuch ſeizure ſhall be determined at the next, or at fartheſt the ſecond quarter ſeſſions after ſeizure; and the ſame, after condemnation or recovery by judgment of ſuch ſeſſions, ſhall be openly burned or deſtroyed by order of the ſame, at his majeſty's charge. *ſ.* 4.

And any ſervant employed in manufacturing or ſelling ſuch leaves or materials, ſhall on conviction before two juſtices, by oath of one witneſs, be committed to the common gaol or houſe of correction, to be kept to hard labour not exceeding ſix months. *ſ.* 5.

Carrying tobacco or ſnuff by land.

3. By the 24 *G.* 2. *c.* 41. and the 26 *G.* 2. *c.* 13. No tobacco, or ſtalks, exceeding 24 *lb.* weight, nor any ſnuff exceeding 10 *lb.* ſhall be conveyed by land; unleſs, if it is *unmanufactured tobacco*, a certificate be firſt had from the officers at the port of importation, together with the *importer*'s oath thereto, that the duties were paid or ſecured at the importation, and when, and in what veſſel it was imported; and if the perſon applying for the certificate be a *purchaſer from the importer*, then on his oath, atteſting the marks and numbers of the identical hogſheads purchaſed, or out of which the tobacco was taken, and from whom purchaſed, and when; and if he be a *ſecond purchaſer*, then on his oath in like manner, provided that if it is an entire hogſhead, the name of the feller may be omitted in ſuch certificate.

And if it is *tobacco ſtalks or ſnuff, or other manufactured tobacco*, then not without a certificate and oath of the *importer* being firſt had, that ſuch ſtalks were ſtripped, or ſnuff or other manufactured tobacco, was made from one or more hogſheads, for which the duties were paid or ſecured at the importation; and if the perſon applying for the certificate be a *purchaſer*, he ſhall make oath that ſuch ſtalks were ſtripped, or ſuch ſnuff or other manufactured tobacco was made from one or more hogſheads, which had been delivered and received according to the directions of the ſaid act of the 24 *G.* 2.

And before any ſuch tobacco, or ſtalks, or ſnuff, ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the package, with the marks and numbers ſet thereon, and the weight of each ſpecies of goods contained in each package, and the place from whence, and to which they are to be carried, and by whom, or the inn from whence, and to whom conſigned; and ſhall ſubſcribe his name, and make oath to the truth thereof; and the certificate ſhall expreſs the number of days

it

it ſhall continue in force, and ſhall accompany the goods; and upon its arrival, the owner of the goods ſhall deliver it to the chief officer of the cuſtoms; and if there be none ſuch, then to the officers of exciſe, who ſhall examine the ſame with the goods, and if they agree, the goods may be taken away by the owner, and the officer ſhall thereupon enter ſuch certificate in a book for that purpoſe, and tranſmit an account thereof to the officer appointed by the treaſury for keeping ſuch accounts.

And if any tobacco, or ſtalks, exceeding 24 *lb.* or ſnuff exceeding 10 *lb.* ſhall be found removing by land from the port of importation, without having one or other of the certificates before directed; the ſame together with the packages, horſes, and carriages ſhall be forfeited; and the carrier, ſhall beſides be committed to the county gaol for one month by one juſtice where the offence ſhall be committed, or the offender ſhall be found.

And any officer of the cuſtoms or exciſe may ſeize the ſame, and proſecute; and the proof that the ſame had been removed with a proper certificate, and that the duties had been paid or ſecured, ſhall be on the claimer, and not on the officer.

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* which ſhall have been *carried coaſtwiſe*, from the port of importation to any other place, ſhall be removed from thence by land, without a certificate from the officers of the port to which they were carried coaſtwiſe, that it appears to them by the entries of the certificates in their books which came with the goods from the place of importation, that the duties were paid, and alſo in what veſſel they were brought, and when, and alſo that the perſon applying to them for the ſame, had made oath to the truth thereof; and before ſuch goods ſhall be removed by land, the proprietor or his agent ſhall inſert on the back of the certificate, the names of each package, with the marks and numbers thereon, and the weight of each ſpecies in each package, and the place from and to which they are to be carried, and the name of the perſon to whom ſent, and ſhall ſubſcribe his name, and make oath to the truth thereof: And if any ſuch goods ſhall be found removing without ſuch certificate, or if it appear that ſuch certificate is forged; the goods, package, horſes, and carriages ſhall be forfeited, and the carrier ſhall alſo forfeit 10 *l.* and be committed to the county gaol for one month, by one juſtice where the offence ſhall be committed, or the offender ſhall be found. *ſ.* 22.

And

And no tobacco or ſtalks exceeding 24 *lb.* nor ſnuff exceeding 10 *lb.* ſhall be conveyed by land, unleſs the package be marked on the outſide, with the reſpective words *tobacco*, *tobacco ſtalks*, or *ſnuff*, in letters not leſs than three inches in length; on pain of forfeiture of the ſame, with the package, and 1 *s.* a pound to be paid by the owner. *ſ.* 23.

The ſaid penalties to be half to the king, and half to him that ſhall ſue in any of the courts at *Weſtminſter*. *ſ.* 33.

Toll. See Miller.

Torn.

Torn, what.

1. THE ſheriff's torn is the king's court of record, holden before the ſheriff, for redreſſing of common grievances within the county. 2 *Haw.* 55.

Meaning of the word.

2. And foraſmuch as the ſheriff did go in circuit twice every year, throughout every hundred within the county, it was called *tour*, or *tourn*, which ſignifieth a circuit or perambulation. 2 *Inſt.* 70.

When to be holden.

3. By the 31 *Ed.* 3. *ſt.* 1. *c.* 15. The ſheriff ſhall make his turn yearly, once within a month after *Eaſter*, and another time within a month after *Michaelmas*; and if he holds it in other manner, he ſhall loſe his turn for the time; that is, the court ſo holden for that time ſhall be void, and the ſheriff ſhall loſe the profits thereof. 2 *Inſt.* 71.

And he ſhall keep his turn no where but in due place and accuſtomed. 9 *H.* 3. *c.* 35.

Who are to appear at the torn.

4. Peers, clergymen, and tenants in ancient demeſne, are privileged from appearing at the torn. 52 *H.* 3. *c.* 10. 2 *Haw.* 57.

Alſo they that have hundreds of their own ſhall not be bound to appear at the turn, but in the bailiwicks where they be dwelling. 52 *H.* 3. *c.* 10.

But all other perſons, being above the age of 12 years, are bound to attend at ſuch courts, in order to make inquiry of all common grievances, and alſo to give ſecurity to the publick for their good behaviour, by taking an oath to be faithful to the king, and to obſerve his laws, and alſo by incorporating themſelves into ſome free pledge or tithing which formerly ſignified a certain number of families living together in the ſame precinct, the maſters whereof were

every one of them mutually bound for each other, and puniſhable for the default of any member of any ſuch family, in not appearing to anſwer for himſelf on any accuſation made againſt him. 2 *Haw.* 55.

Jurors in the torn.

5. No bailiff, or other officer, ſhall return or impanel any perſon upon an inquiſition in the torn, but ſuch as be of good name and fame, and have 20*s.* a year freehold within the ſhire, or 26*s.* 8*d.* cuſtomary or copyhold; on pain of 40*s.* and the ſheriff other 40*s.* half to the king, and half to him that will ſue: and an indictment otherwiſe taken ſhall be void. 1 *R.* 3. *c.* 4.

But if the party except not to it upon his arraignment, he is concluded by that omiſſion. 2 *H. H.* 70.

And the jury ſhall put their ſeals to their inquiſitions. 13 *Ed.* 1. *c.* 13.

Indictments to be indented.

6. And indictments in the torn ſhall be by roll indented, one part to remain with the indictors, and the other with him that taketh the inqueſt. 1 *Ed.* 3. *c.* 17.

Diſtreſs and ſale.

7. It ſeems to be ſettled at this day, that a diſtreſs is incident of common right to every fine and amercement in the torn; and that the offender's goods may be diſtrained in any lands within the precinct of the court, or in the highway; and that the goods diſtrained may be ſold. But the bailiff muſt have a ſpecial warrant to make diſtreſs. 2 *Haw.* 60, 61.

Or the fine may be recovered by action of debt. 2 *Haw.* 61.

Within what time offences are cognizable in the torn.

8. But no offence is cognizable in the torn, unleſs it ariſe ſince the holding of the laſt court. 2 *Haw.* 66.

Traverſe.

9. It ſeems to be agreed, that a preſentment in the torn, of any offence within the juriſdiction of the court, being neither capital, nor concerning any freehold, ſubjects the party to a fine or amerciament, without any traverſe. 2 *Haw.* 71.

Indictment to be certified to the ſeſſions.

10. By the *magna charta*, *c.* 17. The ſheriff is reſtrained in his torn, from hearing and determining indictments of felonies; yet the ſheriffs did commonly make out proceſs or precepts in nature of *capias* to arreſt the parties; but by the 1 *Ed.* 4. *c.* 2. their power of making out proceſs upon theſe indictments is taken away, as well in caſes of indictments of felony as other miſdemeanors within their cognizance, but they are to deliver all ſuch indictments and preſentments to the next ſeſſions, who are to make out proceſs thereupon, and hear and determine them. 2 *H. H.* 71.

And the eſtreats of the fines thereupon ſhall be inrolled, and by indenture be delivered to the ſheriff, to the uſe of him

him that was ſheriff at the time of the indictment ſo taken in the torn as aforeſaid. 1 *Ed.* 4. *c.* 2.

Conſtables choſen in the torn.

11. The conſtables of common right are to be choſen and ſworn in the torn or leet. 2 *Haw.* 62.

Trades. See Apprentices.

Tranſportation.

For felonies within clergy.

1. WHERE any perſon ſhall be convicted of grand or petit larceny, or any felonious ſtealing or taking of money or goods, within the benefit of clergy; and liable only to burning in the hand or whipping (except perſons convicted for receiving or buying ſtolen goods, knowing them to be ſtolen) the court before whom he ſhall be convicted, or any ſubſequent court held with like authority, inſtead of ordering him to be burnt in the hand or whipt, may order him to be ſent as ſoon as conveniently may be, to ſome of his majeſty's plantations in *America*, for ſeven years; and ſhall have power to convey, transfer, and make over ſuch offender, by order of court, to the uſe of any perſon who ſhall contract for the performance of ſuch tranſportation, to him and his aſſigns, for ſeven years. 4 *G. c.* 11. *ſ.* 1. 6 *G. c.* 23. *ſ.* 1.

For felonies without benefit of clergy.

2. And where any offender ſhall be convicted of any crime, for which he is excluded the benefit of clergy, and the king ſhall be pleaſed to extend mercy to him, on condition of tranſportation to any part of *America*, and ſuch intention of mercy be ſignified by a principal ſecretary of ſtate, it ſhall be lawful for any court having proper authority, to allow ſuch offender the benefit of a pardon under the great ſeal, and to order the like transfer and conveyance, to any perſon (who will contract for the performance of ſuch tranſportation) and to his aſſigns, of ſuch offender, as alſo of any perſon convicted of receiving or buying ſtolen goods knowing them to be ſtolen, for the term of 14 years, in caſe ſuch condition of tranſportation be general, or elſe for ſuch other term as ſhall be made part of ſuch condition. 4 *G. c.* 11. *ſ.* 1.

Contract for tranſportation.

3. Every ſuch perſon, to whom any ſuch court ſhall order the offender to be transferred or conveyed, before he ſhall be delivered over to him or his aſſigns to be tranſported, ſhall contract with ſuch perſon as ſhall be ordered by the court, and give ſufficient ſecurity to the ſatisfaction of ſuch

court, that he will tranſport, or cauſe to be tranſported effectually, ſuch offender, to ſuch of his majeſty's plantations in *America* as ſhall be ordered by the court, and procure an authentic certificate from the governor, or the chief cuſtom houſe officer of the place (which they ſhall give without fee) of the landing of ſuch offender (death and caſualties of the ſea excepted), and that the ſaid offender ſhall not be ſuffered to return from the ſaid place to any part of *Great Britain* or *Ireland*, by the wilful default of ſuch perſon ſo contracting, or of his aſſigns. 4 *G. c.* 11. *ſ.* 3.

Perſons impowered to contract.

4. The court may appoint, if they think fit, two or more juſtices where the offender ſhall be convicted, who ſhall have power to contract with any perſon for performance of the tranſportation; and may order the like ſecurity, and cauſe the felons to be delivered by the gaoler to the perſon contracting, or his aſſigns; which contracts and ſecurity ſhall be certified by the juſtices who ſhall make and take the ſame, to the next court held with like authority for the place where the felon was convicted, to be filed and kept among the records of ſuch court. 6 *G. c.* 23. *ſ.* 2.

Bond for tranſportation.

5. And all ſecurities for tranſportation ſhall be by bond in the name of the clerk of the peace, who ſhall (by ſuch ſuit as the juſtices in ſeſſion ſhall direct) proſecute ſuch bond in his own name, and be paid ſuch coſts as he ſhall ſuſtain in ſuch ſuit for the penalty of ſuch bond, or otherwiſe howſoever by reaſon thereof, out of the publick ſtock by the treaſurer; and all money recovered on ſuch bond, ſhall be to the uſe of the county or place, and be paid to the treaſurer, and be part of the publick ſtock. 6 *G. c.* 23. *ſ.* 4.

Conveying to the port.

6. The perſon ſo contracting, and to whom any felon ſhall be delivered to be tranſported, or any perſon directed by the ſaid juſtices (impowered to contract as aforeſaid), or their aſſigns, may in ſuch manner as they think fit, carry and ſecure the felon, in and thro' any county, toward the ſea port; and if any perſon ſhall reſcue ſuch felon, or aſſiſt him in eſcaping, he ſhall be guilty of felony without benefit of clergy. 6 *G. c.* 23. *ſ.* 5.

Charges of tranſportation.

7. All charges in and about making the contracts, taking ſecurities, and conveying of felons in order to be tranſported, ſhall be born by the county or place for which the court was held; and the treaſurer ſhall, by order of the juſtices in ſeſſions, pay the ſame to ſuch perſons as ſhall be employed for the purpoſes aforeſaid. 6 *G. c.* 23. *ſ.* 3.

Eſcaping from on ſhipboard.

8. If any perſon ſhall aſſiſt any felon to attempt his eſcape, from any boat or veſſel carrying felons for tranſ-

portation, he ſhall (being proſecuted within a year) be guilty of felony, and tranſported for ſeven years. 16 *G.* 2. *c.* 31. *ſ.* 3, 4.

Perſons tranſporting themſelves voluntarily.

9. Where any perſon of the age of 15, and under 21, ſhall be willing to be tranſported, and to enter into any ſervice in any of his majeſty's plantations in *America*, it ſhall be lawful for any merchant or other, to contract with him for ſuch ſervice, not exceeding eight years; provided ſuch perſon come before the lord mayor or a juſtice of the peace, if the contract be in *London*, or before two juſtices if elſewhere, and before him or them acknowledge ſuch conſent, and ſign the contract in his or their preſence, and with his or their approbation. And then it ſhall be lawful for ſuch merchant or other, to tranſport ſuch perſon, and keep him according to the contract: Which ſaid contract, and approbation of ſuch magiſtrate or magiſtrates, with the tenor of ſuch contract, ſhall be certified by ſuch magiſtrate or magiſtrates to the next ſeſſions, to be regiſtred by the clerk of the peace without fee. 4 *G. c.* 11. *ſ.* 5.

Returning from tranſportation.

10. And if any offender ſo ordered to be tranſported, ſhall return into *Great Britain* or *Ireland*, before the end of his term, he ſhall be liable to be puniſhed as a perſon attainted of felony without benefit of clergy, and execution ſhall be awarded againſt him accordingly. 4 *G. c.* 11. *ſ.* 2.

Being at large after order or agreement for tranſportation.

11. And by the 16 *G.* 2. *c.* 15. If any felon or other offender, ordered for tranſportation, or having agreed to tranſport himſelf on certain conditions either for life or any number of years, ſhall be afterwards at large in any part of *Great Britain*, without ſome lawful cauſe, before the expiration of the term; he ſhall be guilty of felony without benefit of clergy. *ſ.* 1.

And he may be tried at the aſſizes of the county or liberty where he ſhall be apprehended, or from whence he was ordered to be tranſported; and the clerk of aſſize, and clerk of the peace, where ſuch orders of tranſportation ſhall be made, ſhall, at the requeſt of the proſecutor, or any other in the king's behalf, certify a tranſcript briefly and in a few words, containing the effect and tenor of every indictment and conviction of ſuch felon, and of the *order and contract* for tranſportation, to the judges where he ſhall be indicted (not taking for the ſame above 2*s.* 6*d.*) which certificate being produced in court ſhall be a ſufficient proof that ſuch perſon hath been convicted and ordered to be tranſported. 6 *G. c.* 23. *ſ.* 6, 7. 16 *G.* 2. *c.* 15. *ſ.* 2.

Order and contract] So it is in the record; but in Mr. *Hawkins*'s edition of the ſtatutes, it is *order or contract*,

tract, which may induce a miſtake: for as the words *order or contract* do imply, that a perſon may be convicted upon a certificate either of the one, or of the other, it may happen in ſuch caſe that an innocent perſon ſhall be condemned; for if a *contract* for tranſportation ſhall be certified only, and not the *order* for tranſportation, it is poſſible there may never have been any ſuch order, and then ſuch contract, being without the party's own conſent or knowledge, and without any order to ſupport it, is void.

Reward for apprehending ſuch perſon.

12. And whoever ſhall diſcover, apprehend, and proſecute to conviction of felony without benefit of clergy, any ſuch offender, ſhall be intitled to a reward of 20 *l.* and ſhall have the like certificate, and like payments made, without fee, as any perſons may be intitled to for the apprehending, proſecuting, and convicting of highwaymen. 16 *G.* 2. *c.* 15. *ſ.* 3.

Pardon.

13. But the king may at any time pardon and diſpenſe with the tranſportation, and allow of the offender's return, he paying to his proprietor ſuch ſum as ſhall be adjudged reaſonable by any two juſtices of the peace within the province where ſuch proprietor dwells. And where the offender ſhall have ſerved his term, ſuch ſervice ſhall have the effect of a pardon. 4 *G. c.* 11. *ſ.* 2.

Traverſe.

Traverſe, whence.

1. TRAVERSE took its name from the *French de traverſe*, which is no other than *de tranſverſo* in *Latin*, ſignifying, *on the other ſide*; becauſe as the indictment on the one ſide chargeth the party, ſo he on the other ſide cometh in to diſcharge himſelf. *Lamb.* 540.

Traverſe, what.

2. To traverſe an indictment then, is to take iſſue upon the chief matter thereof; which is the ſame as if one ſhall ſay, *to make contradiction*, or *to deny the point of the indictment:* As in a preſentment againſt a perſon for a highway overflowed with water, for default of ſcouring a ditch, which he, and they whoſe eſtate he hath in certain lands there, have uſed to ſcour or cleanſe; ſuch perſon may traverſe either the matter, to wit, that there is no highway there, or that the ditch is ſufficiently ſcoured; or otherwiſe, he may traverſe the cauſe, to wit, that he hath not that land, or that he and they whoſe eſtate he hath have not uſed to ſcour the ditch. *Lamb.* 541.

Form of a traverſe.

3. And foraſmuch as in the record of one traverſe, there is at once diſcovered, the ſtyle of the ſeſſions, the indictment, the proceſs to anſwer, the traverſe it ſelf, the verdict, and judgment thereupon, the proceſs of execution, the yielding of the parties, and the aſſeſſment of their fines, ſo that it alone may ſerve inſtead of all, it is judged requiſite to inſert the ſame as follows:

(Style of the ſeſſions.)

Somerſet. HERETOFORE, *to wit, at the ſeſſions of the peace held at* Bridgewater *in the county aforeſaid, on the* tueſday *next before the feaſt of St.* Matthew *the apoſtle, in the* ——— *year of the reign of* ——— *by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth, before* J. P. *and* K. P. *eſquires, and others their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, as alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſame county committed, by the oath of*

(The indictment.)

twelve jurors it is preſented, that John Long *of* ——— R. M. *of* ——— *and* T. L. *of* ——— *with divers others unknown, evil doers and diſturbers of the peace of our ſaid lord the king, in a warlike manner arrayed, joined and aſſembled, on the* ——— *day of* ——— *in the night of the ſame day, in the year aforeſaid, with force and arms, to wit, with ſwords, ſtaves, clubs, guns, and other arms, as well offenſive as defenſive, at* ——— *the cloſe of one* W. Willet *(called* B.*) unlawfully, riotouſly, and routouſly broke and entred, and eight waggon loads of hay, to the value of* ——— *then and there being, of the goods and chattels of the ſaid* W. W. *then and there unjuſtly and unlawfully took and carried away, againſt the peace of our ſaid lord the king, and againſt the form of*

(Proceſs to anſwer.)

the ſtatute in that caſe made and provided: Whereupon it was commanded to the ſheriff, that he ſhould not omit, &c. *but*

(Traverſe.)

cauſe them to come to anſwer. And afterwards, to wit, on the tueſday *aforeſaid next before the feaſt of St.* Matthew *the apoſtle, in the year aforeſaid, before the aforeſaid juſtices, came the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons, and having had the hearing of the indictment aforeſaid, ſeverally ſay, that they are thereof not guilty, and of this they put themſelves upon the country; and* Adam Martin, *who for our lord the king in this behalf proſecutes, in like manner*

(Jury.)

&c. *Therefore let there come thereupon a jury before the juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine* &c. *at the ſeſſions of the peace at* Welles *&c. on the* tueſday *next after the* Epiphany *of our lord then next to be holden, And who* &c.

(Day given.)

To recognize &c. *Becauſe as well* &c. *The ſame day is given*

as

as well to the aforeſaid A. M. *who proſecutes* &c. *as to the aforeſaid* J. L. R. M. *and* T. L. &c. *To which ſeſſions of the peace holden at* W. *aforeſaid in the county aforeſaid, on the aforeſaid day* &c. *before* ——— *and their aſſociates, juſtices of our ſaid lord the king, aſſigned to keep the peace in the county aforeſaid, and alſo to hear and determine divers felonies, treſpaſſes and other miſdemeanors in the ſame county committed, came as well the aforeſaid* A. M. *who proſecutes* &c. *as the aforeſaid* J. L. R. M. *and* T. L. *in their proper perſons. And the jurors aforeſaid, by the ſheriff of the county aforeſaid* (Verdict.) *for this impanelled, and demanded, to wit,* A. B. C. D. &c. *likewiſe did come, who to ſay the truth concerning the premiſſes being tried and ſworn, ſay upon their oath, that the aforeſaid* J. L. R. M. *and* T. L. *are guilty, and every of them is guilty, of the treſpaſs, contempt, and riot aforeſaid, in the indictment aforeſaid above ſpecified, in manner and form as againſt them is above ſuppoſed. Therefore it is conſidered by* (Judgment.) *the court, that the aforeſaid* J. L. R. M. *and* T. L. *be taken to ſatisfy our lord the king of their fines, by occaſion of the treſpaſs, contempt, and riot aforeſaid. Which* J. L. (Proceſs of execution.) R. M. *and* T. L. *then and there preſent in court, prayed that they to a fine with our ſaid lord the king, by the occaſion aforeſaid, may be admitted; and thereof they put themſelves ſeverally upon the mercy of our lord the king. And the fine* (Fine aſſeſſed.) *of the ſame* J. L. *by the juſtices aforeſaid is aſſeſſed, at* 3 l. 6 s. 8 d. *and the fine of the ſame* R. M. *is aſſeſſed at* 20 s. *and the fine of the ſame* T. L. *is aſſeſſed at* 5 l. *of good and lawful money of* Great Britain, *to the uſe and behoof of our ſaid lord the king.* Lamb. 543.

4. Every defendant indicted for a miſdemeanor, ſhould give full eight days notice of trial to the proſecutor, before the aſſizes, if the trial is to be there; if at the ſeſſions, it is uſual to give two or three days notice. *Cr. Circ.* 20, 48. Notice of trial.

Treaſon.

1. TREASON, according to lord *Coke*, is derived from *trahir*, to betray; and *trahiſon*, by contraction *treaſon*, is the betraying it ſelf. 3 *Inſt.* 4. Meaning of the word treaſon.

Treaſon, generally ſpoken, is intended, not of petit treaſon, but of high treaſon only. 1 *H. H.* 316.

2. Notwithſtanding that treaſon and miſpriſion of treaſon are not within the letter of the commiſſion of the peace, yet Power of juſtices of the peace therein.

yet inaſmuch as they are againſt the peace of the king, and of the realm, any juſtice of the peace may, either upon his own knowledge, or the complaint of others, cauſe any perſon to be apprehended for any ſuch offence. And ſuch juſtice may take the examination of the perſon ſo apprehended, and the information of all thoſe who can give any material evidence againſt him, and put the ſame in writing; and alſo bind over ſuch who are able to give any ſuch evidence, to the king's bench, or gaol delivery, and certify his proceedings to ſuch court. 2 *Haw.* 39. *Hal. Pl.* 168. 1 *H. H.* 372.

Bail.

3. And having committed the offender (for he is by no means bailable by juſtices of the peace, 3 *Ed.* 1. *c.* 15. 2 *Haw.* 99.) it may be adviſable for him to ſend an account immediately of all the particulars, to a ſecretary of ſtate.

Treaſon by the 25 Ed. 3.

4. By the ſtatute of the 25 *Ed.* 3. *ſt.* 5. *c.* 2. (which lord *Hale* calls a *ſacred* act; and lord *Coke* an *excellent* act, and the king who made it a *bleſſed* king, and the parliament a *bleſſed* parliament;) All treaſons which had been uncertain before, were ſettled. Which act, by the 1 *Mar. ſeſſ.* 1. *c.* 1. is reinforced, and again made the only ſtandard of treaſon; and all ſtatutes, between the ſaid ſtatutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treaſon, or miſpriſion of treaſon, are abrogated; ſo that no offence is at this day to be eſteemed high treaſon, unleſs it be either declared to be ſuch by the ſaid ſtatute of the 25 *Ed.* 3. or made ſuch by ſome ſtatute ſince the 1 *Mar.*

And therefore I ſhall firſt conſider ſuch offences as are high treaſon within the ſaid ſtatute of the 25 *Ed.* 3. and then ſuch as are made treaſon by ſtatutes ſubſequent to the ſaid ſtatute of the 1 *Mar.*

The words of the ſtatute of the 25 *Ed.* 3. as to this matter, are as follows:

Whereas divers opinions have been before this time, in what caſe treaſon ſhall be laid, and in what not; the king, at the requeſt of the lords and commons, hath made a declaration in the manner as hereafter followeth; that is to ſay, When a man doth compaſs or imagine the death of our lord the king, or of our lady his queen, or of their eldeſt ſon and heir; or if a man do violate the king's companion (that is, his wife, 3 *Inſt.* 9.) *or the king's eldeſt daughter unmarried, or the wife of the king's eldeſt ſon and heir; or if a man do levy war againſt our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm, or elſewhere; and thereof be probably* (proveablement, proveably) *attainted of open deed, by the people of their condition. And*

if

if a man counterfeit the king's great or privy ſeal, or his money; and if a man bring falſe money into the realm, counterfeit to the money of England, *knowing the money to be falſe; and if a man ſlay the chancellor, treaſurer, or the king's juſtices of the one bench or the other, juſtices in eyre, or juſtices of aſſize, and all other juſtices aſſigned to hear and determine, being in their places, doing their offices.*

And by the ſtatute of the 1 *Mar. ſeſſ.* 1. *c.* 1. (which lord *Hale* calls another excellent law) *No act, deed, or offence being by act of parliament made treaſon, by words, writing, ciphering, deeds, or otherwiſe whatſoever, ſhall be adjudged to be treaſon, but only ſuch as be declared by the ſaid ſtatute of the* 25 Ed. 3. And this (he ſays) at one blow laid flat all the numerous treaſons at any time enacted ſince the 25 *Ed.* 3. 1 *H. H.* 308.

Of open deed] Lord *Coke* (3 *Inſt.* 14, 140.) ſeems to be of opinion, upon the ſaid act of the 25 *Ed.* 3. that bare *words* are not a ſufficient *overt act*, or *open deed*, whereby to convict a perſon of treaſon; but that they are miſpriſion of treaſon only. So alſo lord *Hale* (1 *H. H.* 111, 118. and elſewhere throughout) ſeemeth to think, that words, unleſs put into writing, are not regularly an overt act. But Mr. *Hawkins* (1 *Haw.* 39.) argues the contrary, and amongſt other reaſons for his opinion, he obſerves, that to charge a man with ſpeaking treaſon is unqueſtionably actionable, which could not be, if no words could amount to treaſon: alſo, that as in caſe of felony, he who by command or perſuaſion induceth another to commit felony, is an acceſſary in felony, ſo he who does the ſame in treaſon is a principal traytor (there being no acceſſaries in treaſon, but all being principals); and yet ſuch perſon doth no act but by words.

And it has been the conſtant practice, ever ſince the revolution at leaſt, where a perſon by treaſonable diſcourſes hath manifeſted a deſign to murder or depoſe the king, to convict him upon ſuch evidence. And in *Lowick*'s caſe, *Holt* Ch. J. declared, that *expreſs words* were not neceſſary to convict a man of high treaſon; but if from the tenor of his diſcourſe the jury is ſatisfied he was engaged in a deſign againſt the king's life, this is ſufficient to convict the priſoner. *Read. Treaſ.* 146.

5. Offences made treaſon ſince the 1 *Mar.* are as follows: Treaſons ſince the 1 Mar.

(1) With regard to the *pretender*——By the 6 *An. c.* 7. If any perſon ſhall by writing or printing affirm, that the pretender hath any right to the crown, or any other perſon otherwiſe than according to act of parliament, he ſhall be

guilty of high treaſon. And if any perſon ſhall by preaching, teaching, or adviſed ſpeaking affirm the ſame, he ſhall incur a præmunire.

But no perſon ſhall be proſecuted for words, unleſs oath be made thereof before a juſtice in three days; and the proſecution be within three months; and the conviction on the oath of two witneſſes.

And by the 13 *W. c.* 3. If any perſon ſhall hold any correſpondence with the pretender, or any perſon employed by him, or ſhall remit any money to his uſe, he ſhall be guilty of high treaſon. And by the 17 *G.* 2. *c.* 39. This is extended to the pretender's ſons.

(2) Offences in relation to the coin, are made treaſon by many ſtatutes; which are treated of in title Coin.

(3) Alſo there are many offences made treaſon, with regard to the popiſh uſurped juriſdiction; which are treated of under title Popery.

Acceſſaries in high treaſon.

6. In high treaſon, as hath been ſaid before, there are no acceſſaries, but all are principals; and therefore whatſoever act or conſent will make a man acceſſary to a felony before the act done, the ſame will make him a principal in caſe of high treaſon. 3 *Inſt.* 9, 21.

Proſecution to be in 3 years.

7. By the 7 *W. c.* 3. No perſon ſhall be proſecuted for high treaſon, but within three years after the offence committed; except in the caſe of deſigning to aſſaſſinate the king's perſon.

Trial to be the next term.

8. And by the 31 *C.* 2. *c.* 2. Perſons committed for high treaſon, ſhall be indicted the next term, or next aſſize; otherwiſe they ſhall be let to bail, unleſs it appear to the court, upon oath, that the witneſſes for the king could not be produced in that time; and in ſuch caſe, they ſhall be indicted the ſecond term or aſſize, or elſe diſcharged.

Copy of the indictment.

9. Perſons indicted for high treaſon whereby corruption of blood ſhall be made, or for miſpriſion of ſuch treaſon (except for counterfeiting the coin, the great ſeal, privy ſeal, privy ſignet, or ſign manual) ſhall have a copy of the indictment (but not the names of the witneſſes) delivered to them five days before trial. 7 *W. c.* 3.

Copy of the panel.

10. And they ſhall have copies of the panel of the jurors delivered to them, two days before trial. 7 *W. c.* 3.

Proceſs for witneſſes.

11. And ſhall have proceſs of court to compel their witneſſes to appear. 7 *W. c.* 3.

Liſt of the witneſſes.

12. And moreover, after the death of the perſon pretending to be king of *England* by the name of *James* the third, when a perſon is indicted for high treaſon, or miſpriſion of treaſon, both a copy of the indictment, and liſts of the jurors, and alſo of the witneſſes, ſhall be delivered

to

to the party indicted, ten days before the trial. 7 *An.* *c.* 21. *ſ.* 11.

13. And ſuch perſons ſhall have two ſuch counſel as they ſhall deſire aſſigned them by the court, who ſhall have acceſs to them at reaſonable times. 7 *W.* *c.* 3. Counſel.

Likewiſe perſons impeached by the houſe of commons, of high treaſon whereby corruption of blood ſhall be made, ſhall be admitted to make their full defence by two counſel, who ſhall be aſſigned for that purpoſe, in like manner as upon indictments and other proſecutions. 20 *G.* 2. *c.* 30.

14. And they ſhall be allowed to make their defence by witneſſes on oath. 7 *W.* *c.* 3. Witneſſes ſworn.

15. And they ſhall not be attainted but on the oath of two witneſſes, either both of them to the ſame overt act, or one of them to one, and the other of them to another overt act of the ſame treaſon; unleſs they ſhall confeſs, or ſtand mute, or refuſe to plead, or challenge peremptorily above 35 of the jury. 7 *W.* *c.* 3. Two witneſſes.

16. The judgment for high treaſon (not relating to the coin) is, That he ſhall be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out, and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters diſpoſed of at the king's pleaſure. 2 *Haw.* 443. Judgment.

The judgment of a woman for high treaſon, is to be drawn and burnt. 3 *Inſt.* 211.

17. In the ſaid judgment is implied forfeiture of lands and goods to the king, loſs of dower, and corruption of blood. 3 *Inſt.* 211. Forfeiture.

But after the death of the pretender (and of his eldeſt and every other ſon, 17 *G.* 2. *c.* 39. *ſ.* 3.) no attainder for treaſon ſhall diſinherit or prejudice any heir or other perſon, other than the offender during his life. 7 *An.* *c.* 21. *ſ.* 10.

Petit treaſon.

1. *Moreover, there is another manner of treaſon, when a ſervant ſlayeth his maſter, or a wife her huſband; or when a man ſecular or religious ſlayeth his prelate, to whom he oweth faith and obedience.* 25 Ed. 3. ſt. 5. c. 2. Petit treaſon, what.

High treaſon is againſt the king, petit treaſon againſt the ſubjects. 3 *Inſt.* 20.

2. No

Two witneſſes. 2. No perſon ſhall be convicted of petit treaſon, but on the oath of two witneſſes, or confeſſion. 1 *Ed.* 6. *c.* 12. *ſ.* 22.

Judgment. 3. The judgment againſt a man for petit treaſon is, that he ſhall be drawn to the place of execution, and there hanged by the neck till he be dead: The judgment againſt a woman is, that ſhe ſhall be drawn to the place of execution, and there burnt. 2 *Haw.* 444.

Forfeiture. 4. The conſequence of attainder, is, forfeiture of lands (to the lord of the fee), and of goods; loſs of dower; and corruption of blood. 2 *Haw. c.* 49.

Acceſſary. 5. Altho' there can be no acceſſaries in high treaſon, yet in petit treaſon there may be acceſſaries both before and after. 3 *Inſt.* 21.

And acceſſaries before the fact are ouſted of clergy, by ſeveral ſtatutes; but acceſſaries after the fact have their clergy in all caſes of petit treaſon, for no ſtatute takes it from them. 2 *H. H.* 342.

Miſpriſion of treaſon.

Miſpriſion, what. 1. Miſpriſion cometh of the *French* word *meſpris*, which properly ſignifieth neglect or contempt: And miſpriſion of treaſon, in legal underſtanding, ſignifieth, when one knoweth of any treaſon, tho' no party or conſenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inſt.* 36. 1 *H. H.* 371.

Judgment. 2. The judgment of miſpriſion of treaſon is, to be impriſoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inſt.* 36.

Caution. 3. Every man therefore that knoweth a treaſon, ought with all ſpeed to reveal it to the king, his privy council, or other magiſtrate. *H. Pl.* 127.

Miſpriſion of petit treaſon. 4. But it ſeemeth that miſpriſion of petit treaſon is not ſubject to the judgment of miſpriſion of high treaſon, but only is puniſhable by fine and impriſonment, as in the caſe of miſpriſion of felony. 1 *H. H.* 375.

Treaſure found.

1. TREASURE trove, or treaſure found, is *where any gold or ſilver, in coin, plate, or bullion, hath been of ancient time hidden, whereſoever it be found, whereof no perſon can prove any property, it doth belong to the king, or to ſome other by the king's grant, or preſcription.* 3 Inſt. 132. Treaſure trove, what.

Gold or ſilver] For if it be of any other metal, it is no treaſure; and if it be no treaſure, it belongs not to the king, for it muſt be *treaſure* trove. 3 *Inſt.* 132.

Whereſoever it be found] Whether it be of ancient time hidden in the ground, or in the roof or walls, or other part of a caſtle, houſe, building, ruins, or elſewhere, ſo as the owner cannot be known. 3 *Inſt.* 132.

Belong to the king] The reaſon whereof is a rule of the common law, that ſuch goods whereof no perſon can claim any property, belong to the king; as wrecks, ſtrays, and the like. 3 *Inſt.* 132.

2. Larceny cannot be committed of ſuch things whereof no man hath any determinate property, tho' the things themſelves are capable of property, as of treaſure trove, or wreck till ſeized; tho' he that hath them in point of franchiſe, may have a ſpecial action againſt him that takes them. 1 *H. H.* 510. Taking treaſure trove, not felony.

3. The puniſhment for concealment of treaſure trove, is by fine and impriſonment. 3 *Inſt.* 133. But finable.

4. And it belongeth to the coroner to inquire thereof. 3 *Inſt.* 133. The coroner may inquire thereof.

Concerning which it is enacted by the 4 *Ed.* 1. *ſt.* 2. that *a coroner being certified by the king's bailiffs, or other honeſt men of the country, ſhall go to the places where treaſure is ſaid to be found.* And it is further enacted in the ſame ſtatute, that *the coroner ought to inquire of treaſure that is found, who were the finders, and likewiſe who is ſuſpected thereof; and that may be well perceived, where one liveth riotouſly, haunting taverns, and hath done ſo of long time; hereupon he may be attached for this ſuſpicion, by 4, or 6, or more pledges, if he may be found.*

5. Alſo it ſeems to be agreed, that all ſeizures of treaſure trove, belonging to the king, may be inquired of in the ſheriff's torn: But it ſeems queſtionable, whether a preſcription in a court leet to inquire of ſuch ſeizure belonging Alſo the ſheriff in his torn.

ing to the lord of it, being a ſubject, be good or not, ſince it is againſt the general rule of the law, for the leet to take cognizance of treſpaſſes done to the private damage of the lord, becauſe that would make him his own judge. 2 *Haw.* 67.

Treaſurer.

Treaſurer how choſen.

1. THE treaſurers ſhall be perſons reſident in the county or diviſion, and ſhall be appointed by the juſtices at their general or quarter ſeſſions; firſt giving ſufficient ſecurity to be accountable for the money which ſhall be paid to them in purſuance of this act (for the levying of county rates), and to pay ſuch ſums as ſhall be ordered by the juſtices in ſeſſions, and for the due and faithful execution of the truſts repoſed in them. 12 *G.* 2. *c.* 29. *ſ.* 6.

Continuance in his office; and his ſalary.

2. And they may continue the treaſurer from time to time in his office, and remove him at their pleaſure, and appoint another in his place; and may allow him a ſalary not exceeding 20*l.* a year, to be paid out of the county rates. 12 *G.* 2. *c.* 29. *ſ.* 11.

His election to be certified into the king's bench.

3. And that the treaſurers may be the better amenable to the court of king's bench, with regard to the payment of the money for relief of the priſoners of the *King's Bench* and *Marſhalſea* priſons, Every perſon who ſhall be elected treaſurer of any county, ſhall in 30 days after his election tranſmit his name and place of abode to the clerk of the crown in the court of king's bench, to be by him entred or regiſtred, for which entry no fee ſhall be taken: And if ſuch treaſurer ſhall neglect or refuſe ſo to do, then upon the report of the ſaid clerk of the crown, the ſaid court may make a rule upon him, requiring his performance; which ſhall be inforced as other rules of the ſaid court, at the charge of ſuch treaſurer. 11 *G.* 2. *c.* 20.

His account.

4. And the treaſurer ſhall keep books of entries of the ſeveral ſums by him received and paid; and ſhall deliver in a true and exact account upon oath if required of his receipts and diſburſements, diſtinguiſhing the particular uſes to which the ſeveral ſums have been applied, to the juſtices at every general or quarter ſeſſions, and ſhall lay before them the proper vouchers for the ſame: Which accounts and vouchers, ſhall be depoſited with the clerk of the peace, to be kept amongſt the records, to be inſpected

ſpected by any of the juſtices without fee. 12 *G.* 2. *c.* 29. *ſ.* 7, 8.

5. And the diſcharge of the juſtices, by their order at their general or quarter ſeſſions, ſhall be a ſufficient releaſe and diſcharge to ſuch treaſurer. 12 *G.* 2. *c.* 29. *ſ.* 9. And diſcharge.

Trees. See **Wood.**

Treſpaſs. See **Juſtice of the peace.**

Trial. See **Jury, Seſſions.**

Trophy money. See **Militia.**

Turnips.

IF any perſon ſhall ſteal and take away, or maliciouſly pull up and deſtroy any turnips growing, or being in any grounds belonging to any perſon, and be convicted thereof (within 30 days) by confeſſion, or oath of one witneſs, before one juſtice; he ſhall for the firſt offence pay to the owner ſuch ſatisfaction for the damage, and within ſuch time, as the juſtice ſhall appoint; and ſhall alſo pay down, upon conviction, to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10*s.* as the juſtice ſhall think fit; and if he ſhall not make ſuch recompence and payment, the juſtice may either commit him to the houſe of correction for any time not exceeding one month, or order him to be whipt by the conſtable: And being convicted of a ſecond offence, he ſhall be committed to the houſe of correction for three months. 23 *G.* 2. *c.* 26. *ſ.* 13, 14.

Turnpikes. See **Highways.**

Vagrants.

THIS title conſiſteth chiefly of the ſtatute of the 17 G. 2. c. 5. commonly called the vagrant act; but in the progreſs thereof, the other ſtatutes relating to vagrants are inſerted in the places where they properly fall in.

I. Idle and diſorderly perſons.
II. Rogues and vagabonds.
III. Incorrigible rogues.
IV. Apprehending.
V. Reward for apprehending.
VI. Penalty for not apprehending.
VII. Privy ſearch.
VIII. Examination.
IX. Whipping or impriſonment.
X. Further puniſhment.
XI. Conveying.
XII. What to be done with at the place to which they are ſent.
XIII. Scottiſh *vagrants.*
XIV. Iriſh *vagrants.*
XV. Lunatick vagrants.
XVI. Penalty of lodging vagrants.
XVII. Children born in vagrancy.
XVIII. General penalty for hindring the execution of the vagrant act.
XIX. Charges of maintaining and conveying vagrants.
XX. Appeal.
XXI. Treble coſts.
XXII. Exception of ſpecial franchiſes.

I. Idle and diſorderly perſons.

By the 7 *J.* *c.* 4. Idle and diſorderly perſons ſhall be ſent to the houſe of correction; and by the 17 *G.* 2. *c.* 5. idle and diſorderly perſons are thus deſcribed: (1) All perſons who threaten to run away, and leave their wives or children to the pariſh. (2) All perſons who ſhall unlawfully return to the pariſh or place from whence they have been legally removed by order of two juſtices, without bringing a certificate from the pariſh or place whereunto they belong. (3) All perſons who not having wherewith to maintain themſelves, live idle without employment, and refuſe to work for the uſual and common wages given to other labourers in the like work, in the pariſhes or places where they are. (4) All perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages, to beg or gather alms in the pariſhes or places where they dwell——All theſe ſhall be deemed idle and diſorderly perſons. And it ſhall be lawful for one juſtice to commit ſuch offenders (being thereof convicted before him, by his own view, or confeſſion, or oath of one witneſs) to the houſe of correction, to be kept to hard labour not exceeding one month. And any perſon may apprehend, and carry before a juſtice, any ſuch perſons going about from door to door, or placing themſelves in ſtreets, highways, or paſſages to beg alms in the pariſhes or places where they dwell; and if they ſhall reſiſt, or eſcape from the perſon apprehending them, they ſhall be puniſhed as rogues and vagabonds. And the ſaid juſtice, by warrant under his hand and ſeal, may order (A) any overſeer where ſuch offender ſhall be apprehended, to pay 5 *s.* to any perſon in ſuch pariſh or place ſo apprehending them, for every offender ſo apprehended; to be allowed in his accounts, on producing the juſtice's order, and the perſon's receipt to whom it was paid: And if the overſeer ſhall neglect or refuſe to pay the ſame, the ſaid juſtice on oath thereof, may by his warrant order the ſame to be levied by diſtreſs and ſale of his goods, and in ſuch caſe he ſhall not be allowed the ſame in his accounts. *ſ.* 1.

Note; This is another, and a quite different reward, from that which is given hereafter for apprehending rogues and vagabonds; the latter being 10 *s.* and this but 5 *s.* the latter paid by the county, but this paid by the pariſh, as a puniſhment for ſuffering their poor to beg, altho' within their own pariſh; for if they beg out of their pariſh, they incur

incur a further degree of guilt, becoming thereby rogues and vagabonds.

II. Rogues and vagabonds.

An infant under the age of 7 years, ſhall not be ſaid to be a rogue and vagabond; but ſhall be removed to its place of ſettlement, as other poor perſons not vagrants. *Black.* 276.

But perſons who ſhall be deemed rogues and vagabonds, are by the 17 *G.* 2. *c.* 5. theſe that follow:

(1) All perſons going about as patent gatherers, or gatherers of alms, under pretences of loſs by fire, or other caſualty.

(2) Perſons going about as collectors for priſons, gaols, or hoſpitals.

(3) Fencers.

(4) Bearwards.

(5) Common players of interludes, and all perſons who ſhall for hire, gain, or reward, act, repreſent, or perform, or cauſe to be acted, repreſented, or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any part therein, not being authorized by law.

(6) Minſtrels.

But this ſhall not prejudice the heirs or aſſigns of *John Dutton* of *Dutton*, late of the county of *Cheſter*, eſquire, their heirs or aſſigns, concerning the liberty, privilege, or inheritance, which they, their heirs or aſſigns now lawfully uſe, or ought to uſe within the county of *Cheſter*, by reaſon of any ancient charters of any kings of this land, or by reaſon of any preſcription, or lawful uſage, or title whatſoever.

And this exception is as ancient as the vagrant act of the 39 *El.* (now repealed).

And in the 43 *El. c.* 9. which continued the ſaid act of the 39 *El.* the above clauſe was continued only for one year, except before the end of the ſaid year, the ſaid *John Dutton*, or his heirs, ſhould procure the lords chief juſtices and lord chief baron, or two of them, on hearing his allegations and proofs, to make certificate into the chancery, to be there inrolled, that the ſaid *John Dutton*, or his heirs, ought lawfully (if no ſtatute againſt rogues or beggars had been made) by charter, tenure, or preſcription, to have ſuch liberty of licenſing of minſtrels, as he claimeth and uſeth.

And

And in the 1 *J. c.* 25. the ſame clauſe was continued without limitation; ſo that it is probable ſuch proof had then been made as is abovementioned.

And the hiſtory of the matter is this: *Randal Blandeville*, earl of *Cheſter*, was about the end of the reign of K. *Rich.* the firſt, ſuddenly beſieged by the *Welſh*, in the caſtle of *Ruthelent* in *Flintſhire*; whereupon he preſently ſends to his conſtable of *Cheſhire*, one *Roger Lacy*, to haſten, with what force he could, to his relief. It happened to be on *Midſummer-day*, and a great fair then held at *Cheſter*. Whereupon *Roger* immediately got together a great lawleſs mob of fidlers, players, coblers, *&c.* and marches immediately towards the earl; and the *Welſh* perceiving a great multitude approaching, raiſed the ſiege and fled. The earl being thus freed, comes back with his conſtable to *Cheſter*; and in memory of this ſervice, by a charter grants to *Roger Lacy* and his heirs, power over all the fidlers, letchers, whores, and ſhoemakers in *Cheſter*. About the latter end of the reign of King *John*, or beginning of K. *Hen.* 3. *Roger Lacy* being dead, his ſon *John* by deed, granted to one *Hugh Dutton* his ſteward, and to his heirs, the rule and authority over all the letchers and whores in all *Cheſhire*, in theſe words; *Sciant præſentes & futuri, quod ego Johannes Conſtabularius Ceſtriæ, dedi & conceſſi, & hac præſenti charta mea confirmavi Hugoni de Dutton & hæredibus ſuis, magiſtratum omnium leccatorum & meretricum totius Ceſtriæ, ſic ut liberius illum magiſtratum teneo de comite, ſalvo jure meo mihi & hæredibus meis.* Under which grant by ancient cuſtom, the heirs of *Dutton* claim and enjoy a privilege and authority over all the common fidlers and minſtrels in *Cheſter*, and in all *Cheſhire* to this day, and in memory thereof, keep a yearly court at *Cheſter* on *Midſummer-day*, being *Cheſter* fair, and in a ſolemn manner ride attended thro' the city to St. *John Baptiſt*'s church, with all the fidlers of the county playing before the lord of *Dutton*, and then at the court renew their licences yearly; and none ought to uſe the trade or employment of a minſtrel or fidler, either within the city or county, but by an order and licence of that court. *Sh.* 360.

(7) Jugglers.

(8) All perſons pretending to be gypſies, or wandring in the habit or form of *Egyptians*.

And by the 1 & 2 *P. & M. c.* 4. If any perſon ſhall bring into the realm any perſons calling themſelves, or commonly called *Egyptians*; he ſhall forfeit 40 *l.* half to the king, and half to him that ſhall ſue. And if any of the ſaid perſons called *Egyptians*, ſo brought into the realm,

ſhall continue within the ſame for one month, he ſhall (on conviction in the county where he was apprehended) be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child not above 13 years of age; nor to charge any perſon as acceſſary to the ſaid felony.

And by the 5 *El. c.* 20. Every perſon (tho' not brought from beyond ſea) who ſhall be found in any company of vagabonds, commonly called, or calling themſelves *Egyptians*, or counterfeiting, transforming, or diſguiſing themſelves by their apparel, ſpeech, or other behaviour like unto them, and ſhall continue in the ſame at one time, or at ſeveral times, by the ſpace of one month, ſhall on conviction in the county where he was apprehended, be adjudged guilty of felony without benefit of clergy, and ſhall not be tried by a jury *per medietatem linguæ*. But this not to extend to any child within 14 years of age.

(9) Or pretending to have ſkill in phyſiognomy, palmeſtry, or like crafty ſcience, or to tell fortunes.

(10) Or uſing any ſubtil craft to deceive and impoſe on any of his majeſty's ſubjects.

(11) Or playing or betting at any unlawful games or plays.

(12) All perſons who run away, and leave their wives or children, whereby they become chargeable to any pariſh or place.

(13) All petty chapmen, and pedlars, wandring abroad, not being duly licenſed, or otherwiſe authorized by law.

(14) All perſons wandring abroad, and lodging in alehouſes, barns, outhouſes, or in the open air, not giving a good account of themſelves.

(15) All perſons wandring abroad and begging, pretending to be ſoldiers, mariners, or ſeafaring men.

But this ſhall not extend to ſoldiers wanting ſubſiſtence, having lawful certificates from their officers, or the ſecretary at war; or to mariners or ſeafaring men licenſed by ſome teſtimonial or writing under the hand and ſeal of ſome juſtice of the peace, ſetting down the time and place of their landing or diſcharge, and the place to which they are to paſs, and the names of the chief towns or places thro' which they are to paſs, and limiting the time of their paſſage, while they continue in the direct way to the place to which they are to paſs, and during the time ſo limited.

Which exception hath a reference to the ſtatute of the 39 *El. c.* 17. which is as follows:

All

All idle and wandring ſoldiers or mariners, or idle perſons which ſhall be wandring as ſoldiers and mariners, ſhall ſettle themſelves in ſome ſervice, labour, or other lawful courſe of life, without wandring, or otherwiſe repair to the places where they were born, or to their dwelling places if they have any, and there remain, betaking themſelves to ſome lawful trade or courſe of life; on pain to be reputed as felons, and to ſuffer as in caſe of felony without benefit of clergy. *ſ.* 2.

And every idle and wandring ſoldier or mariner, which coming from his captain from the ſeas, or from beyond the ſea, ſhall not have a teſtimonial under the hand of a juſtice of the peace of or near the place where he landed, ſetting down therein the place and time when and where he landed, and the place of his dwelling or birth, unto which he is to paſs, and a convenient time therein limited for his paſſage, or having ſuch teſtimonial, ſhall wilfully exceed the time therein limited, above 14 days; and alſo as well every ſuch idle and wandring ſoldier or mariner, as every other idle perſon wandring as ſoldier or mariner, which ſhall forge or counterfeit any ſuch teſtimonial, or have with him any ſuch teſtimonial forged or counterfeited, knowing the ſame to be counterfeited or forged; in all theſe caſes, every ſuch act or acts to be felony without benefit of clergy. *ſ.* 3.

And the juſtices of aſſize, and juſtices of the peace in ſeſſions, may hear and determine all ſuch offences, and execute the offenders convicted before them, as in caſes of felony is accuſtomed; except ſome honeſt perſon valued at the laſt ſubſidy to 10 *l.* in goods, or 40 *s.* in lands, or elſe ſome honeſt freeholder, as by the ſaid juſtices ſhall be allowed, will be contented before ſuch juſtices to take ſuch offender into his ſervice for one whole year, and then before the ſaid juſtices will be bound by recognizance of 10 *l.* if he keep not the ſaid perſon for one whole year, and bring him to the next ſeſſions for the peace and gaol delivery next enſuing after the ſaid year; and if any ſuch perſon retained depart within the year, without the licence of him that ſo retained him, he ſhall be guilty of felony without benefit of clergy. *ſ.* 4.

But if any ſuch idle and wandring perſon ſhall fall ſick by the way, ſo that by reaſon of his weakneſs he cannot travel to his journey's end within the time limited in his teſtimonial, he ſhall not be within the danger of this ſtatute, ſo as he ſettle himſelf in ſome lawful courſe of life as aforeſaid, to repair as aforeſaid to the place where he was born or was laſt abiding, within convenient time af-

ter the recovery of his ſickneſs, and there remain as aforeſaid. *ſ.* 5.

And if any ſuch ſoldier or mariner coming from the ſeas, ſhall not at the time of his landing, or in his travel to the place whereunto he is to repair, going the direct way [have wherewithal to maintain himſelf in his journey], he may reſort to ſome juſtice next adjoining to the place of landing or way, and make known unto him his poverty; who upon perfect notice thereof had, may licenſe (B) him to paſs the next and direct way to the place where he is to repair, and to limit him ſo much time only, as ſhall be neceſſary for his travel thither; and in ſuch caſe, purſuing the form of ſuch licence, he may for his neceſſary relief in his travel, aſk and take the relief that any perſon ſhall willingly give him. *ſ.* 7.

Note; the above words [*have wherewithal to maintain himſelf in his journey*] are inſerted in order to make up the ſenſe, the ſtatute being evidently imperfect without ſome ſuch like words; and the parliament roll itſelf in this place is in like manner imperfect: and yet this is the ſole clauſe in any act of parliament, by which power is given to a juſtice of the peace to licenſe any perſon to beg; and of which ſuch evil uſe is often made by profligate perſons, in counterfeiting ſuch licences, and thereby abuſing the country.

Lord *Coke*, upon this ſtatute, ſpeaking of the preventing of perſons from wandring without paſſes, or with the ſame counterfeited, obſerves thereupon, that this excellent work (as he calls it) of preventing them from wandring abroad without lawful licences, is without queſtion feaſible; for upon the making of the ſaid ſtatute, and a good ſpace after, whilſt the juſtices and other officers were diligent and induſtrious, there was not a rogue to be ſeen in any part of *England*; but when the juſtices and others became remiſs, rogues ſwarmed again. 2 *Inſt.* 729.

But, in truth, the great miſchief ſeemeth to be, the ſuffering theſe perſons to wander at all: Such perſons, above all others, ought to be conveyed immediately from their place of landing or diſcharge, to their place of ſettlement, at the publick charge, for three reaſons; 1. Becauſe, if they be ſailors, they may be uſeful at the ports where they belong. 2. Becauſe otherwiſe, whether they be ſoldiers or ſailors, they become initiated into the trade of begging, which they are never after willing to leave. 3. Becauſe being for the moſt part able and luſty, they are moſt likely to do miſchief in the country.

(16) Or pretending to go to work in harveſt.

But this ſhall not extend to any perſon going abroad to work at any lawful work in the time of harveſt, ſo as he carry with him a certificate ſigned by the miniſter and one of the churchwardens or overſeers where he ſhall inhabit, declaring that he hath a dwelling houſe or place there.

Which exception hath reference to a clauſe in the ſtatute of the 13 & 14 *C.* 2. *c.* 12. concerning ſettlements, by which 40 days inhabitancy made a ſettlement; whereby it is enacted, that it ſhall be lawful for any perſon to go into any county, pariſh, or place, to work in time of harveſt, or at any time to work at any other work, ſo that he carry with him a certificate from the miniſter of the pariſh, and one churchwarden and one overſeer, that he hath a dwelling houſe or place in which he inhabiteth, and hath left wife and children, or ſome of them there (or otherwiſe as the condition of ſuch perſon requireth) and is declared an inhabitant there; and in ſuch caſe, if he ſhall not return when his work is finiſhed, or ſhall fall ſick or impotent, it ſhall not be accounted a ſettlement.

(17) And all other perſons, wandring abroad and begging ——ſhall be deemed rogues and vagabonds.

III. Incorrigible rogues.

By the 17 *G.* 2. *c.* 5. Incorrigible rogues are thus deſcribed:

(1) All end gatherers offending againſt the ſtatute of the 13 *G.* being convicted of ſuch offence.

By which act of the 13 *G. c.* 23. *ſ.* 8. The offence is this; *viz.* The collecting, buying, receiving, or carrying any ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods; and the puniſhment of ſuch perſons is, in order to prevent their committing abuſes, by ſuch practices, in the woollen manufacture.

(2) All perſons apprehended as rogues and vagabonds, and eſcaped from the perſons apprehending them, or refuſing to go before a juſtice, or to be examined on oath before ſuch juſtice, or refuſing to be conveyed by ſuch paſs as is herein after directed, or knowingly giving a falſe account of themſelves on ſuch examination, after warning given them of their puniſhment.

(3) All rogues or vagabonds who ſhall break or eſcape out of any houſe of correction, before the expiration of the term for which they were committed or ordered to be confined by this act.

(4) All perſons who after having been puniſhed as rogues and vagabonds, and diſcharged, ſhall again commit any of the ſaid offences:—All theſe ſhall be deemed incorrigible rogues. *ſ.* 4.

IV. Apprehending rogues.

If any perſon ſhall be found offending againſt this act, the conſtable ſhall apprehend him, and convey or cauſe him to be conveyed to a juſtice of the peace. 17 *G.* 2. *c.* 5. *ſ.* 5.

And any other perſon *may* apprehend him, and carry him to the conſtable, or to a juſtice. *id.*

V. Reward for apprehending.

If any perſon, not being a conſtable, ſhall apprehend any ſuch rogue or vagabond, and ſhall deliver him to a conſtable, or convey him to a juſtice; or if any conſtable ſhall ſo apprehend and convey him, it ſhall be lawful for ſuch juſtice to reward him, by making an order (C) under hand and ſeal, upon the high conſtable, to pay 10*s.* to the perſon ſo apprehending him, within one week after demand, and producing ſuch order, and on his giving a receipt for the ſame; which ſhall be allowed by the treaſurer to ſuch high conſtable, on paſſing his accounts, and delivering ſuch order and receipt, and alſo his own receipt for the ſame to ſuch treaſurer; the treaſurer alſo to be allowed the ſame in his accounts, on producing the ſaid vouchers; and in towns corporate, and other places, where there are no high conſtables, ſuch petty conſtables ſhall pay or retain ſuch reward, and be allowed the ſame in their accounts, on producing the like vouchers. And if any high conſtable, or where there is none, ſuch petty conſtable, ſhall refuſe or neglect to pay ſuch reward on demand, ſuch juſtice by his warrant may levy the ſum of 20*s.* by diſtreſs and ſale of his goods, and thereout allow the ſaid reward, and ſuch other recompence for his trouble, loſs of time, and expences, as the ſaid juſtice ſhall think fit; the overplus to be returned on demand. 17 *G.* 2. *c.* 5. *ſ.* 5.

VI. Penalty for not apprehending.

If the conſtable ſhall refuſe or neglect, to uſe his beſt endeavours, to apprehend or convey to ſome juſtice ſuch offender; or if any other perſon, being charged by any juſtice ſo to do, ſhall refuſe or neglect to uſe his beſt endeavours

deavours to apprehend and deliver to the conſtable, or to carry ſuch offender before ſome juſtice; where no conſtable can be found; he ſhall, being convicted thereof on view, or oath of one witneſs, before one juſtice, forfeit 10*s.* to the poor, by diſtreſs. 17 *G.* 2. *c.* 5. *ſ.* 5.

VII. Privy ſearch.

The juſtices, or two of them, ſhall four times a year at leaſt, or oftner (if need be) meet in their reſpective diviſions, and by their warrant (D) command the conſtables of every hundred, pariſh, town, and hamlet, who ſhall be aſſiſted with ſufficient men, to make a general privy ſearch in one night, for the apprehending of rogues and vagabonds; and every juſtice ſhall alſo, on receiving information that rogues and vagabonds are in any place within his juriſdiction, iſſue his warrant to the conſtable to ſearch for and apprehend ſuch rogues and vagabonds, and ſuch as they ſhall find upon ſuch ſearch, they ſhall cauſe to be brought before a juſtice. 17 *G.* 2. *c.* 5. *ſ.* 6.

And by the 25 *G.* 2. *c.* 36. Two juſtices, in caſe any perſon apprehended upon a general privy ſearch, or by a ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (altho' no direct proof be then made thereof) may examine ſuch perſon on oath, as to his ſettlement, and means of livelihood; and the ſubſtance of ſuch examination ſhall be put in writing, and ſigned by ſuch perſon, and by the juſtices, and be tranſmitted to the next ſeſſions to be filed; and if ſuch perſon ſhall not ſhew, that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to appear to his character, and to give ſecurity (if required) for his future appearance at ſome other day to be fixed for that purpoſe, the juſtices may commit him to ſome priſon or houſe of correction, for any time not exceeding ſix days; and in the mean time order the overſeers of the poor, to advertiſe in ſome publick paper, a deſcription of his perſon, and any thing that ſhall be found on him, or in his cuſtody, and which he ſhall be ſuſpected not to have come honeſtly by, and the place of his commitment, and the time and place appointed for his re-examination; and if no accuſation ſhall be then laid againſt him, he ſhall be diſcharged, or otherwiſe dealt with according to law. *ſ.* 12.

But by the ſhortneſs of the time limited for advertiſing him, this ſeems chiefly calculated for places within the bills of mortality.

VIII. Examination.

Where any rogues or vagabonds, apprehended by any conſtable, or ſuch other perſon as aforeſaid, ſhall be brought before a juſtice, he ſhall inform himſelf by the examination (E) upon oath of the perſon apprehended, or of any other perſon, of the condition and circumſtances of the perſon ſo apprehended, and of the pariſh or place where he was laſt legally ſettled; the ſubſtance of which ſhall be put into writing, and be ſigned by the perſon or perſons ſo examined; and the juſtice ſhall likewiſe ſign the ſame, and tranſmit it to the next ſeſſions, there to be filed and kept on record. 17 *G.* 2. *c.* 5. *ſ.* 7.

IX. Whipping or impriſonment.

And ſuch juſtice ſhall order ſuch perſon ſo apprehended, to be publickly whipt (F) by the conſtable, petty conſtable, or ſome other perſon, to be appointed by ſuch conſtable or petty conſtable, of the pariſh or place, where ſuch perſon was apprehended; or ſhall order him to be ſent to the houſe of correction (G) till the next ſeſſions, or for any leſs time, as ſuch juſtice ſhall think proper. 17 *G.* 2. *c.* 5. *ſ.* 7.

X. Further puniſhment.

And where any offender againſt this act ſhall be committed to the houſe of correction till the next ſeſſions, and the juſtices at ſuch ſeſſions ſhall on examination of the circumſtances of the caſe adjudge ſuch perſon a rogue or vagabond, or an incorrigible rogue; they may order ſuch rogue or vagabond to be detained in the houſe of correction, to hard labour for any further time not exceeding ſix months, and ſuch incorrigible rogue for any further term not exceeding two years, nor leſs than ſix months; and during his confinement, to be whipped in ſuch manner, and at ſuch times and places, as they ſhall think fit; and ſuch perſon may, if the ſeſſions think convenient, afterwards be ſent away by a paſs; and if ſuch perſon, being a male, is above the age of 12 years, the court may, before he is diſcharged from the houſe of correction, ſend him to be employed in his majeſty's ſervice by ſea or land; and if ſuch incorrigible rogue, ſo ordered by the ſeſſions to be detained in the houſe of correction, ſhall break out or make his eſcape, or ſhall offend again in like manner, he ſhall be

be guilty of felony, and be tranſported for ſeven years. 17 *G.* 2. *c.* 5. *ſ.* 9.

And by the 13 & 14 *C.* 2. *c.* 12. The juſtices in ſeſſions may tranſport ſuch rogues, vagabonds, and ſturdy beggars, as ſhall be duly convicted, and adjudged to be incorrigible. *ſ.* 23.

And by the 17 *G.* 2. *c.* 5. If the child of any vagrant, above the age of ſeven years, ſhall be committed to the houſe of correction, the juſtices in ſeſſions, if they ſee convenient, at any time before ſuch child be diſcharged, may order ſuch child to be placed out as a ſervant or apprentice, to any perſon who is willing to take ſuch child, till ſuch child ſhall be of the age of 21 years, or for a leſs time: And if any offender, who was found wandring with ſuch child, ſhall be again found with the ſame child which was ſo placed out, he ſhall be deemed an incorrigible rogue. *ſ.* 24.

And where any vagrants have been committed to the houſe of correction till the next ſeſſions, if on examination of ſuch perſons no place can be found, to which they may be conveyed, the ſeſſions ſhall order them to be detained and employed in the houſe of correction, until they can provide for themſelves, or until the juſtices in ſeſſions can place them in ſome lawful calling, as ſervants, apprentices, ſoldiers, mariners, or otherwiſe, either within this realm, or in the plantations in *America*. *ſ.* 28.

XI. Conveying.

After ſuch whipping or confinement, the juſtice may, if he thinks convenient, by a paſs (H, I) under hand and ſeal, cauſe him to be conveyed to the place of his laſt legal ſettlement; but if it cannot be found, then to the place of his birth; or if he be under the age of 14 years, and have any father or mother living, then to the place of the abode of ſuch father or mother, there to be delivered to ſome churchwarden or overſeer. 17 *G.* 2. *c.* 5. *ſ.* 7.

And the juſtice ſhall make a duplicate of the paſs and examination, and ſign the ſame; and ſhall afterwards tranſmit the duplicate of the paſs, annexed to the examination, to the next ſeſſions, there to be filed and kept on record; and ſhall annex the duplicate of the examination to the paſs, and ſend it with the ſame; and the ſaid paſs, examination, and duplicate thereof, ſhall and may be read in any court of record as evidence. *ſ.* 8.

And the juſtice who ſhall make the paſs, ſhall with the paſs cauſe likewiſe to be delivered to the conſtable a note

or

or certificate (K) aſcertaining how they are to be conveyed, by horſe, cart, or on foot, and what allowance ſuch conſtable is to have for conveying them. ſ. 10.

And the conſtable who ſhall receive ſuch paſs and certificate, ſhall convey the perſon according to the direction of the paſs, the next direct way to the place where he is ordered to be ſent, if it be in the ſame county, riding, diviſion, corporation, or franchiſe; if not, he ſhall deliver the ſaid perſon to the conſtable of the firſt town, pariſh, or place, in the next county, riding, diviſion, corporation, or franchiſe, in the direct way to the place whither he is to be conveyed, together with the paſs and duplicate of the examination, taking his receipt for the ſame. And ſuch conſtable ſhall without delay apply to ſome juſtice in the ſame county or diviſion, who ſhall make the like certificate, and deliver it to ſuch conſtable, who ſhall with all ſpeed convey ſuch perſon unto the firſt pariſh, town, or place in the next county or diviſion, in the direct way to the place to which he is to be conveyed. And ſo from one county or diviſion to another, till they come to the place to which ſuch perſon is ſent. And the conſtable, who ſhall deliver ſuch perſon to the churchwarden or other perſon ordered to receive him, ſhall at the ſame time deliver the ſaid paſs, with the duplicate of the examination, taking their receipt for the ſame. ſ. 11.

And any juſtice before whom a vagrant ſhall be carried, may order him to be ſearched, and his bundles to be inſpected by the conſtable or other officer in his preſence; and if it ſhall appear that ſuch vagrant ſhall be found to have ſufficient wherewithal to pay for his paſſage, either in whole or in part, the juſtice ſhall order ſo much of the money to be paid, or other effects found upon ſuch vagrant to be ſold, and employed towards the expence of taking up and paſſing ſuch vagrant, returning the overplus, after deducting the charges of ſuch ſale. ſ. 12.

And the juſtices in ſeſſions ſhall limit what rates and allowances, by the mile, or otherwiſe, ſhall be made, for conveying or maintaining rogues, vagabonds, or incorrigible rogues; and make ſuch other orders for the more regular proceeding therein, as they ſhall think proper. ſ. 16.

And if any petty conſtable ſhall bring to any high conſtable ſuch certificate as aforeſaid, together with a receipt or note from the conſtable to whom the perſon was delivered, the ſaid high conſtable ſhall pay the rates aſcertained by ſuch certificate, taking the petty conſtable's receipt; the high conſtable to be allowed the ſame by the treaſurer on paſſing his accounts, on his delivering up ſuch certificate and

receipt,

receipt, and giving his own receipt for the ſame to ſuch treaſurer; the ſame to be allowed the treaſurer in his accounts, on his delivering up the vouchers aforeſaid. And if the high conſtable ſhall refuſe or neglect to pay the ſame on demand, it ſhall be lawful for one juſtice, by his warrant, to levy double the ſum by diſtreſs, and thereout to allow the petty conſtable the ſum aſcertained by the certificate, and ſuch other recompence for his trouble, loſs of time, and expences, as the juſtice ſhall think fit; the overplus to be returned to the high conſtable on demand. And in cities, towns corporate, and other places where there is no high conſtable, the petty conſtable ſhall be allowed what he ſhall ſo pay purſuant to ſuch certificate, in his accounts, on delivering up ſuch vouchers: Or if any maſter of a houſe of correction ſhall deliver ſuch certificate and receipt to the treaſurer, the treaſurer ſhall pay the ſame to him, taking his receipt for the ſame, and be allowed the ſame in his accounts, on delivering up ſuch vouchers. *ſ.* 17.

And by the 26 *G.* 2. *c.* 34. Where the high conſtable hath not money in his hands ſufficient to anſwer the ſaid expences, the treaſurer ſhall pay the ſame to ſuch petty conſtable, on his producing the certificate, and ſuch other vouchers as aforeſaid. *ſ.* 2.

And if any petty conſtable, or governor of any houſe of correction, ſhall counterfeit any ſuch certificate or receipt, or knowingly permit any alteration to be made therein; he ſhall forfeit 50*l.* And if he ſhall not convey, or cauſe to be conveyed, ſuch vagrants, or not deliver them to the proper perſon; or if any conſtable ſhall refuſe to receive any ſuch perſon, or to give ſuch receipt, he ſhall forfeit 20*l.* by diſtreſs and ſale by warrant of the juſtices in ſeſſions, where the offence ſhall be committed; half to the informer, and half to the treaſurer, to be applied by him as part of the publick ſtock; returning the overplus upon demand, charges, of diſtreſs being firſt ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 18.

XII. What to be done with at the place to which he is ſent.

The pariſh or place to which any rogue, vagabond, or incorrigible rogue ſhall be conveyed, ſhall employ in work, or place in ſome workhouſe or almſhouſe, the perſon ſo conveyed, until he ſhall betake himſelf to ſome ſervice or other employment: And if he ſhall refuſe to work, or not betake himſelf to ſome ſervice or other employment, the overſeers may cauſe him to be carried to ſome juſtice, to

be

be ſent to the houſe of correction, there to be kept to hard labour. 17 *G.* 2. *c.* 5. *ſ.* 19.

But if the churchwarden or other perſon who ſhall receive any perſon ſo ſent, ſhall think the examination to be falſe, he may carry the perſon ſo ſent before a juſtice, who if he ſee cauſe, may commit ſuch perſon to the houſe of correction till the next ſeſſions; and the juſtices there, if they ſee cauſe, may deal with ſuch perſon as an incorrigible rogue: But the perſon ſo ſent, ſhall not be removed from the place to which ſent, but by order of two juſtices, in the ſame manner as other poor perſons are removed to the place of their ſettlement. *ſ.* 11.

XIII. Scottiſh *vagrants.* (L)

The conſtable of any pariſh or place, within the counties of *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick*, ſhall on any perſon being ſo delivered to him by a paſs and examination, whoſe place of legal ſettlement is in *Scotland*, deliver the examination to the clerk of the peace, to be kept amongſt the records; and convey ſuch perſon with the paſs into the next adjoining ſhire, ſtewartry, or place, in that part of the united kingdom, and deliver him to ſome conſtable or other officer of the next pariſh, diſtrict, or place within the ſaid ſhire, ſtewartry, or place, taking his receipt for him; and ſuch officer ſhall receive ſuch perſon, and give ſuch receipt, and diſpoſe of him according to law. And if any ſuch vagrant, after being ſo conveyed into *Scotland*, ſhall be found wandring, begging, or miſbehaving himſelf in *England*, he ſhall be deemed an incorrigible rogue. 17 *G.* 2. *c.* 5. *ſ.* 13.

XIV. Iriſh *vagrants.* (M)

Every maſter of a veſſel bound for *Ireland*, the *Iſles of Man*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall on warrant to him directed, under the hand and ſeal of a juſtice of the place where ſuch veſſel ſhall lie (N), take on board ſuch vagrant as ſhall be expreſſed in the warrant, and convey him to ſuch place; and for the charges thereof, the conſtable who ſerves him with the warrant, ſhall pay him ſuch rate by the head, as the juſtices in ſeſſions ſhall appoint; and ſuch maſter ſhall on the back of the warrant ſign a receipt for the money ſo paid, and alſo for the vagrant ſo delivered. Which warrant ſo indorſed ſhall be produced to the juſtice who ſigned and ſealed the ſame, and upon his allowance thereof, under his hand, the money ſo paid ſhall be repaid by the county,

as

as other money for conveying vagrants. And ſuch maſter neglecting or refuſing to tranſport ſuch vagrants, or to indorſe ſuch receipt, ſhall forfeit 5 *l.* to the poor of the pariſh or place where the offence ſhall be committed, to be levied by diſtreſs and ſale of the ſhip, or any goods within the ſame, by warrant of one juſtice, returning the overplus on demand, after the penalty and charges of the ſame are ſatisfied. 17 *G.* 2. *c.* 5. *ſ.* 14.

But no maſter ſhall be compelled to take on board more than one vagrant, for every 20 tons burden. *ſ.* 15.

XV. Lunatick vagrants.

Whereas there are ſometimes perſons, who by lunacy or otherwiſe, are furiouſly mad, or ſo far diſordered in their ſenſes, that they may be dangerous to be permitted to go abroad, it ſhall be lawful for two juſtices where ſuch perſon ſhall be found, by their warrant (O) directed to the conſtables, churchwardens, and overſeers, or ſome of them, to cauſe ſuch perſon to be apprehended, and kept ſafely locked up in ſome ſecure place within the county, or precinct, as ſuch juſtices ſhall appoint; and, if ſuch juſtices find it neceſſary, to be there chained, if the ſettlement of ſuch perſon be within ſuch county or precinct; and if not, then to be ſent to the place of his laſt legal ſettlement by a paſs, *mutatis mutandis*, and ſhall be locked up or chained, by warrant of two juſtices of the place to which he is ſent: And the reaſonable charges of removing, and of keeping, maintaining and curing ſuch perſon, during ſuch reſtraint (which ſhall be during ſuch time only as ſuch lunacy or madneſs ſhall continue) ſhall be paid, ſuch charges being firſt proved upon oath, by order of two juſtices (P) directing the churchwardens or overſeers where any goods, chattels, lands, or tenements of ſuch perſon ſhall be, to ſeize and ſell ſo much of the goods and chattels, or receive ſo much of the annual rents of the lands and tenements, as is neceſſary to pay the ſame; and to account for what is ſo ſeized, ſold, or received, to the next ſeſſions: But if ſuch perſon hath not an eſtate to pay the ſame, over and above what ſhall be ſufficient to maintain his family, then ſuch charges ſhall be paid by the pariſh, town, or place, to which ſuch perſon belongs, by order of two juſtices, directed to the churchwardens and overſeers for that purpoſe. 17 *G.* 2. *c.* 5. *ſ.* 20.

But this ſhall not extend to reſtrain the king's prerogative, or power of the lord chancellor, or the chancellor of the county palatine of *Lancaſter*, or the chamberlain of the

county

county palatine of *Cheſter*, concerning ſuch lunaticks; or to reſtrain or prevent any friend or relation of ſuch lunaticks, from taking them under their own care and protection. *ſ.* 21.

XVI. Penalty of lodging vagrants.

If any perſon ſhall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take ſhelter in his houſe, barn, or other outhouſe or building, and ſhall not apprehend and carry him before a juſtice, or give notice to the conſtable ſo to do; and ſhall be convicted thereof by confeſſion, or oath of one witneſs, before one juſtice; he ſhall forfeit not exceeding 40*s.* nor leſs than 10*s.* half to the informer, and half to the poor, by diſtreſs and ſale. And if any charge ſhall be brought on any pariſh or place, by means of ſuch offence, the ſame ſhall be anſwered to the ſaid pariſh or place by ſuch offender, and be levied by diſtreſs and ſale of his goods as aforeſaid; and if ſufficient diſtreſs cannot be found, ſuch offender ſhall be committed to the houſe of correction by the juſtice, for any time not exceeding one month. 17 *G.* 2. *c.* 5. *ſ.* 23.

XVII. Children born in vagrancy.

Whereas women wandring and begging are often delivered of children, in pariſhes and places to which they do not belong, whereby they become chargeable to the ſame, it is enacted, that where any ſuch woman ſhall be ſo delivered, and become chargeable, the churchwardens or overſeers may detain ſuch woman in their cuſtody, until they can ſafely convey her to a juſtice; who ſhall examine her, and commit her to the houſe of correction until the next ſeſſions, who may, if they ſee convenient, order her to be publickly whipped, and detained in the houſe of correction for any further time not exceeding ſix months. And upon application by the churchwardens and overſeers of the place where ſhe was ſo delivered, the juſtices at ſuch ſeſſions ſhall order the treaſurer to pay them ſuch a ſum, as ſhall be adjudged a reaſonable ſatisfaction for the charges ſuch place has been put to on ſuch woman's account. And if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent thither for want of other ſettlement, by a paſs, by virtue of this act; but the ſettlement of ſuch woman ſhall be deemed the ſettlement of ſuch child. 17 *G.* 2. *c.* 5. *ſ.* 25.

And that it may appear, that the overſeers have done what was incumbent upon them, in order to avoid ſuch ſettlement, it is requiſite for the juſtice (as he ought to do in all other caſes wherein he acteth as judge) to make a record (Q) of the whole proceedings before him; which record (as it ſeemeth) will be the proper evidence in ſuch caſe, if the ſettlement ſhall afterwards be conteſted.

XVIII. General penalty for hindring the execution of the vagrant act.

If any conſtable, or other officer, or governor of any houſe of correction, ſhall be defective in his duty, in any caſe for which no puniſhment is herein before particularly provided; or if any perſon ſhall hinder the execution of this act; or ſhall reſcue any perſon apprehended or paſſing from place to place by virtue thereof; or ſhall be adviſing, aiding, or aſſiſting to his eſcape; and ſhall be thereof convicted, on oath of one witneſs, before one juſtice, he ſhall forfeit not exceeding 5 *l.* nor under 10 *s.* to the poor, by diſtreſs; and if ſufficient diſtreſs cannot be found, to be committed to the houſe of correction, to be kept to hard labour, not exceeding two months. 17 *G.* 2. *c.* 5. *ſ.* 22.

XIX. Charges of maintaining and conveying vagrants.

To defray the expences of apprehending, conveying, and maintaining rogues, vagabonds, and incorrigible rogues, and defraying all other expences neceſſary for the execution of this act, not herein before provided for, the juſtices in ſeſſions may cauſe ſuch ſums as ſhall be neceſſary, to be raiſed in the ſame manner as the general county rate. 17 *G.* 2. *c.* 5. *ſ.* 33.

XX. Appeal.

Any perſon aggrieved by any act of any juſtice out of ſeſſions, in or concerning the execution of this act, may appeal to the next general or quarter ſeſſions of the county, riding, liberty, or diviſion, giving reaſonable notice thereof; whoſe order thereupon ſhall be final. 17 *G.* 2. *c.* 5. *ſ.* 26.

XXI. Treble coſts.

Perſons ſued for any thing done in the execution of this act may plead the general iſſue; and if they recover, ſhall have treble coſts. 17 *G.* 2. *c.* 5. *ſ.* 34.

XXII. Excep-

XXII. Exception of ſpecial franchiſes.

In all cities and towns, where by virtue of ſpecial acts of parliament, the charge of paſſing vagrants is to be defrayed in other manner than is by this act directed; or where ſuch vagrants, by virtue of ſpecial ſtatutes, are to be apprehended and conveyed by any perſon or officer, other than thoſe named in this act, the ſame ſhall not be altered hereby: And perſons conveyed in *London*, ſhall not be delivered in any other precinct within the city, but in the next county. 17 *G.* 2. *c.* 5. *ſ.* 27.

A. Order upon the overſeer to pay 5*s.* for apprehending a perſon begging in his own pariſh.

Weſtmorland. { To the overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS *it duly appears unto me* John Moore, *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county, that* A. O. *of* ——— *in the pariſh of* ——— *in the ſaid county, an idle and diſorderly perſon, did on the* ——— *day of* ——— *go about from door to door* [or, *place himſelf in the ſtreets, highways, and paſſages*] *in the ſaid pariſh, to beg and gather alms there; and was then and there apprehended in the ſaid pariſh of* ——— *by* A. A. *an inhabitant of the ſaid pariſh, and was by him brought before me in order to be dealt withal according to law: I do hereby order you, or ſome, or one of you, to pay unto the ſaid* A. A. *the ſum of* 5*s. on demand, as a reward for apprehending the ſaid* A. O. *he producing and delivering to you this order, and giving to you a receipt for the ſaid ſum. Given under my hand and ſeal, at* Grimeſhill *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

B. Mariner's licence to paſs unapprehended.

Weſtmorland. { To all conſtables and others whom it may concern.

WHEREAS *it appeareth unto me* George Stevenſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county; that* A. M. *mariner, did on the* ——— *day of* ——— *land at* ——— *in the ſaid county, and that he hath nothing wherewithal to relieve himſelf, and that his lawful place of abode is at* ——— *I do hereby licenſe him to paſs*

in

in ——— *days time, through the towns of* ——— *and* ——— *in the direct way to* ——— *aforeſaid; and to aſk and take ſuch relief in his travel in ſuch direct way as aforeſaid as any perſon ſhall willingly give him. Given under my hand and ſeal, at* Warcopp *in the ſaid county, the* ——— *day of* ——— *in the year of our lord* ———

C. Order for payment of 10*s.* for apprehending a vagrant.

Weſtmorland. { To the high conſtable of ———

WHEREAS *it duly appeareth unto me* John Thompſon, *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. R. *a rogue and vagabond, was found wandring and begging,* [or, as the caſe ſhall be] *in the pariſh of* ——— *in the ſaid county; which ſaid* A. R. *was this day brought before me by* A. I. *of* ——— *yeoman, in order to be dealt withal according to law: I do hereby order you to pay unto the ſaid* A. I. *as a reward for apprehending and bringing before me the ſaid rogue and vagabond, the ſum of* 10s. *within one week after demand thereof made, upon his producing and delivering to you this order, and giving unto you his receipt for the ſaid ſum. Given under my hand and ſeal, at* Brough *in the ſaid county, the* ——— *day of* ———

D. Warrant for privy ſearch.

Weſtmorland. { To the high conſtable of *Lonſdale Ward* within the ſaid county.

AT *a meeting of the juſtices of our lord the king aſſigned to keep the peace within the ſaid county, held at* ——— *for the diviſion of* Lonſdale Ward *aforeſaid, this* ——— *day of* ——— *in the* ——— *year of the reign of* ——— *by us* ——— *eſquires, two of the ſaid juſtices, aſſembled at the ſaid meeting, being reſident, living, and dwelling within the ſaid diviſion:*

We do hereby command you forthwith to iſſue your warrants to all the petty conſtables within our ſaid Ward, for the making of a general privy ſearch for rogues and vagabonds, according to the form hereon indorſed. Given under our hands and ſeals at ——— *aforeſaid in the county aforeſaid, the day and year aforeſaid.*

The form of the ſaid high conſtable's warrant.

Weſtmorland, Lonſdale Ward } To the conſtable of ———

BY *virtue of a precept from his majeſty's juſtices of the peace for the ſaid county, acting in and for the ſaid Ward, at their ſpecial meeting for that purpoſe aſſembled, you are hereby required in his ſaid majeſty's name, commanding and taking to your aſſiſtance ſufficient men within your conſtablewick (who are hereby required to aſſiſt you accordingly), to make a general privy ſearch, in the night of the ——— day of ——— throughout your ſaid conſtablewick, for the finding and apprehending of rogues and vagabonds: And ſuch as you ſhall ſo find upon ſuch ſearch, you are to carry forthwith before ſome of his ſaid majeſty's juſtices of the peace for the ſaid county, to be dealt withal according to law. Herein fail you not. Given under my hand the ——— day of ——— in the year of our lord* ———

Edward Cooke, *high conſtable.*

E. Examination of a vagrant.

Weſtmorland. THE *examination of* A. O. *a rogue and vagabond, taken on oath before me* —— *one of his majeſty's juſtices of the peace in and for the ſaid county, the ——— day of ——— in the ——— year of the reign of* ———

Who on his oath ſaith, That he was born at ——— [and ſo trace out the hiſtory of his life, ſo far forth as to aſcertain his legal place of ſettlement.] A. O.

Taken and ſigned the day and year above written, before me the aboveſaid † his mark.

J. P.

F. Warrant to the conſtable for whipping a vagrant.

Weſtmorland. } To the conſtable of ———.

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging, in the pariſh of* ——— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Hugh Robinſon, *clerk, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, that he*

he may be puniſhed and dealt withal according to law: Theſe are therefore to command you to ſtrip, or cauſe to be ſtripped, the ſaid A. O. *naked from the middle upwards, and to whip him or cauſe him to be publickly whipped at the common whipping poſt in your ſaid pariſh; and afterwards to remove and convey the ſaid* A. O. *according to the directions of the paſs herewith delivered to you. Given under my hand and ſeal, at* Lowther *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

G. Commitment of a vagrant to the houſe of correction.

Weſtmorland. { To the conſtable of —— in the ſaid county, and to the keeper of the houſe of correction at ——— in the ſaid county.

FORASMUCH *as* A. O. *a rogue and vagabond, was this day found wandring and begging in the pariſh of* —— *in the ſaid county, not having obtained any legal ſettlement there, and was thereupon apprehended, and is now brought before me* Richard Burn, *clerk, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, that he may be puniſhed and dealt withal according to law: Theſe are therefore to command you the ſaid conſtable, to carry the ſaid* A. O. *to the ſaid houſe of correction, and deliver him to the ſaid keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive the ſaid* A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden for the ſaid county: And have you him then there, together with this precept. Given under my hand and ſeal at* Orton *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———

H. Vagrant paſs within the ſame juriſdiction.

Weſtmorland. { To the conſtable of —— in the ſaid county, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of ——— in the ſaid county, or either of them, to receive and obey.

WHEREAS A. O. *was apprehended within the conſtablewick of* ——— *aforeſaid, in the county aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon*

examination of the ſaid A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county (which examination is hereunto annexed) it doth appear, that* ——— *Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *in the next direct way to the ſaid pariſh of* ——— *within the ſaid county, and there to deliver him to ſome churchwarden, chapelwarden, or overſeer of the poor of the ſame pariſh of* —— *to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon, and provide for him as aforeſaid. Given under my hand and ſeal the* ——— *day of* ——— *in the year of our lord* ———

I. Vagrant paſs from county to county.

Weſtmorland. { To the conſtable of ——— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to the churchwardens, chapelwardens, or overſeers of the poor of the pariſh of ——— in the county of ——— or either of them, to receive and obey.

WHEREAS A. O. *was apprehended in the townſhip of* ——— *aforeſaid in the county of* W. *aforeſaid, as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed) it doth appear, that* ——— *Theſe are therefore to require you the ſaid conſtable to convey the ſaid* A. O. *to the town of* ——— *in the county of* ——— *that being the firſt town in the next precinct through which he ought to paſs in the direct way to the ſaid pariſh of* ——— *in the county of* ——— *to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner to the ſaid pariſh of* ——— *in the county of* ——— *there to be delivered to ſome of the churchwardens or overſeers of the poor of the ſame pariſh of* ——— *to be there provided for according to law. And you the ſaid churchwardens, chapelwardens, and overſeers of the poor are hereby required to receive the ſaid perſon, and*

provide

provide for him as aforeſaid. Given under my hand and ſeal the ——— *day of* ——— *in the year of our lord* ———.

K. The certificate, according to the directions of the ſtatute, ſhall be in the form, or to the effect following.

WHEREAS *by a paſs* (reciting the ſubſtance or effect of the ſaid paſs) *I* (or *we*) *do hereby order and direct the ſaid perſon* (or *perſons*) *to be conveyed on foot* (or, *in a cart*, or *by horſe*, &c.) *to the ſaid town*, (or *pariſh*) *of* ——— *in* ——— (or other place, deſcribing it) *in the way to ſuch pariſh* (*town*, or *place*, as the caſe ſhall be) *in* ——— *days time*; *for which the ſaid conſtable* (&c.) *is to be allowed the ſum of* ——— *and no more. Given under my hand* (or *our hands*) *this* ——— *day*, &c.

L. Vagrant paſs to *Scotland*.

Weſtmorland. { To the conſtable of ——— in the ſaid county of *W.* and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to all conſtables and other officers within that part of *Great Britain* called *Scotland*, whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of* ——— *aforeſaid in the county of* W. *aforeſaid, as a rogue and vagabond*, videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county of* W. *upon oath (which examination is hereunto annexed) it doth appear, that his lawful place of ſettlement is in that part of* Great Britain *called* Scotland: *Theſe are therefore to require you the ſaid conſtable of* ——— *aforeſaid in the county of* W. *aforeſaid, to convey the ſaid* A. O. *to the town of* ——— *in the county of* ——— *that being the firſt town in the next precinct through which he ought to paſs in the direct way to that part of* Great Britain *called* Scotland *aforeſaid, to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs, and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner into the next adjoining ſhire, ſtewartry, or place, in that part of* Great Britain *called* Scotland *aforeſaid, and is there to be delivered to ſome*

conſtable or other officer of the next pariſh, diſtrict, or place within ſuch next adjoining ſhire, ſtewartry or place aforeſaid, taking his receipt for the ſame. And ſuch next officer in that part of Great Britain *called* Scotland *aforeſaid, is hereby required to receive the ſaid* A. O. *and give ſuch receipt as aforeſaid, and to diſpoſe of him the ſaid* A. O. *according to law. Given under my hand and ſeal this ——— day of ——— in the year of our lord ———.*

M. Vagrant paſs to *Ireland.*

Weſtmorland. { To the conſtable of ——— in the ſaid county; and alſo to all conſtables and other officers whom it may concern, to receive and convey; and to all other officers of the peace whom it may concern, to receive and obey.

WHEREAS A. O. *was apprehended in the town of ——— in the ſaid county as a rogue and vagabond,* videlicet, ——— *and upon examination of the ſaid* A. O. *taken before me* J. P. *eſquire, one of his majeſty's juſtices of the peace in and for the ſaid county upon oath (which examination is hereunto annexed) it doth appear, that the lawful ſettlement of him the ſaid* A. O. *is in the kingdom of* Ireland: *Theſe are therefore to require you the ſaid conſtable of ——— to convey the ſaid* A. O. *to the town of ——— in the county of ——— that being the firſt town in the next precinct through which he ought to paſs, in the direct way to the ſaid kingdom of* Ireland, *to which he is to be ſent, and to deliver him to the conſtable or other officer of ſuch firſt town in ſuch next precinct, together with this paſs and the duplicate of the examination of the ſaid* A. O. *taking his receipt for the ſame. And the ſaid* A. O. *is to be thence conveyed on in like manner, until he ſhall arrive in the county of ———, and the conſtable or other officer to whom he ſhall be delivered in the ſaid county of ——— is hereby required to apply to ſome juſtice of the peace in and for the ſaid county of ——— for a warrant to the maſter of any ſhip or veſſel bound for the ſaid kingdom of* Ireland, *that ſhall lie in the ſaid county of ——— to take on board the ſaid ſhip or veſſel him the ſaid* A. O. *and convey him to ſuch place in the ſaid kingdom of* Ireland, *as ſuch ſhip or veſſel ſhall be bound unto. Given under my hand and ſeal the ——— day of ——— in the year of our lord ———.*

N. Warrant

N. Warrant to a maſter of a ſhip to export a vagrant.

Weſtmorland. { *J. P.* eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, To *A. M.* maſter of the ſhip called the —— of —— now lying or being at —— and bound for —— in the kingdom of *Ireland*, ſendeth greeting.

THESE *are in the name of our ſaid lord the king to require you to take on board the ſaid ſhip*, A. O. *and* B. O. *vagrants, both of them being natives of the kingdom of* Ireland *aforeſaid, and having no ſettlement in* England, *and them to convey to —— aforeſaid, in the kingdom of* Ireland *aforeſaid, or to ſuch other place in that kingdom as you ſhall arrive at; and for the charges thereof you ſhall take, and* A. C. *conſtable of —— at the time he ſhall ſerve you with this warrant, ſhall pay, and is hereby required to pay unto you the ſum —— in the whole, that is, at the rate of —— head for each of the ſaid vagrants ſo to be delivered unto you, the ſame being the rate laſt appointed by the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, at their general quarter ſeſſions of the peace held in and for the ſaid county. And you are on the back of this warrant, to ſign a receipt for the money ſo paid, and alſo for the ſaid vagrants ſo delivered unto you. Given under my hand and ſeal, at —— in the ſaid county, the —— day of —— in the —— year ——.*

O. Warrant to ſecure a lunatick.

Weſtmorland. { To the conſtables, churchwardens, and overſeers of the poor of ——

WHEREAS *it hath been proved before us —— two of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, upon the oaths of* A. W. *and* B. W. *both of the pariſh of —— in the county aforeſaid, gentlemen, that* A. L. *late of —— frequently goeth at large in the ſaid pariſh of —— and that he the ſaid* A. L. *is by lunacy ſo far diſordered in his ſenſes, that he is dangerous to be permitted to go abroad, and that his legal ſettlement is in the pariſh of —— Theſe are therefore to authorize and require you, and every of you, to cauſe the ſaid* A. L. *to be ap-*

prehended and kept ſafely locked up in the houſe of A. K. *at* ——— *in the ſaid county, the ſaid* A. K. *being willing to keep and entertain him the ſaid* A. L. *for a reaſonable allowance in that behalf, and the ſaid houſe being a ſecure place: And the ſaid* A. L. *is to be kept ſo locked up only ſo long as ſuch lunacy or diſorder ſhall continue, and no longer. Given under our hands and ſeals, at* ——— *in the ſaid county, the* ——— *day of* ———.

P. Order to charge the lunatick's eſtate, with his keeping, maintenance, and cure.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

WHEREAS A. L. *late of* ——— *in the ſaid county, being a perſon lunatick, and ſo far diſordered in his ſenſes that he was and is dangerous to be permitted to go abroad, hath by warrant under the hands and ſeals of us* ——— *two of his majeſty's juſtices of the peace for the ſaid county, been apprehended and ſafely locked up in the houſe of* A. K. *at* ——— *in the ſaid county, the ſaid houſe being a ſecure place for that purpoſe; And whereas it appears to us, on the oaths of* C. W. *churchwarden, and* O. P. *overſeer of the poor of the pariſh of* ——— *that they the ſaid churchwarden and overſeer have reaſonably expended the ſum of* ——— *in removing the ſaid* A. L. *to the ſaid houſe of the ſaid* A. K. *and in keeping, maintaining, and curing him there: Theſe are therefore to authorize and command you, to ſeize and ſell ſo much of the goods and chattels, and to receive ſo much of the annual rents of the lands and tenements of him the ſaid* A. L. *within your ſaid pariſh, as ſhall be neceſſary to pay the ſame: And for what ſhall be ſo ſeized, ſold, or received by you, you are to account at the next quarter ſeſſions of the peace to be holden for the ſaid county. Given under our hands and ſeals, at* ——— *in the ſaid county, the* ——— *day of* ———.

Q. Record to avoid the ſettlement of a baſtard child born in vagrancy.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— *in the* ——— *year of the reign of our ſovereign lord* George *the ſecond, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth,* A. B. *and* C. D. *overſeers of the poor of the pariſh of* ——— *in the ſaid county, at* ——— *in the ſaid county,*

do bring unto me ——— *one of the juſtices of our ſaid lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, the body of one* A. P. *and do complain unto me the juſtice aforeſaid, and give me to be informed, That on the* ——— *day of* ——— *in the year aforeſaid, at* ——— *in the pariſh aforeſaid, in the county aforeſaid, ſhe the ſaid* A. P. *was wandring and begging, and that ſhe the ſaid* A. P. *then and there, to wit, on the ſaid* ——— *day of* ——— *at* ——— *aforeſaid, in the pariſh aforeſaid, and county aforeſaid, ſo wandring and begging, was delivered of a (male) child; and that thereby ſhe the ſaid* A. P. *hath become chargeable, and is now chargeable, to the ſaid pariſh of* ——— *and that ſhe the ſaid* A. P. *had not then, nor yet hath any lawful ſettlement in the ſaid pariſh of* ——— *And thereupon they the ſaid overſeers of the poor of the pariſh aforeſaid, do pray of me the juſtice aforeſaid, that for themſelves and for the other inhabitants of the pariſh aforeſaid a due remedy may be provided, and that juſtice may be done in that behalf, according to the form of the ſtatute in that caſe made. Which complaint, information, and prayer, by me the juſtice aforeſaid being heard, I the ſaid* J. P. *at* ——— *aforeſaid, in the county aforeſaid, on the ſaid* ——— *day of* ——— *in the year aforeſaid, upon the examination of the ſaid* A. P. *upon oath by me unto her upon the holy goſpel adminiſtred, and upon other lawful evidence and teſtimony before me had and made, do find the ſaid complaint and information to be true. And thereupon it is conſidered by me the juſtice aforeſaid, that ſhe the ſaid* A. P. *be committed, and is by me committed, to the houſe of correction at* ——— *in the county aforeſaid, until the next quarter ſeſſions of the peace to be holden within and for the ſaid county. In teſtimony whereof, I the ſaid* J. P. *the juſtice aforeſaid, at* ——— *aforeſaid, in the county aforeſaid, the* ——— *day of* ——— *aforeſaid, in the year aforeſaid, unto this record do ſet my ſeal.*

Vellum. See Stamps.
Venire. See Proceſs.
Verdict. See Jurors.
Verjuice. See Exciſe.
Victuallers. See Alehouſes.
Vinegar. See Exciſe.
Unlawful aſſembly. See Riot.

Wages. See **Servants.**

Waif. See **Eſtray.**

Warrant.

FOR a warrant to ſearch for ſtolen goods, ſee **Search Warrant.**

If a juſtice ſee a felony or other breach of the peace committed in his preſence, he may in his own perſon apprehend the felon; and ſo he may by word command any perſon to apprehend him, and ſuch command is a good warrant without writing: But if the ſame be done in his abſence, then he muſt iſſue his warrant in writing. 2 *H. H.* 86.

Concerning which we will ſhew,

I. For what cauſes it may be granted.

II. What is to be done previous to the granting of it.

III. How far it is grantable on ſuſpicion.

IV. The form of it.

I. For what cauſes it may be granted.

There ſeems to be no doubt, but that a warrant may be lawfully granted by any juſtice, for treaſon, felony, or præmunire, or any other offence againſt the peace: Alſo it ſeems clear, that wherever a ſtatute gives to any one juſtice a juriſdiction over any offence, or a power to require any perſon to do a certain thing ordained by ſuch ſtatute, it impliedly gives a power to every ſuch juſtice to make out a warrant to bring before him any perſon accuſed of ſuch offence, or compellable to do the thing ordained by ſuch ſtatute; for it cannot but be intended, that a ſtatute giving a perſon juriſdiction over an offence, doth mean alſo to give him the power incident to all courts, of compelling the party to come before him. 2 *Haw.* 84.

But in caſes where the king is no party, or where no corporal puniſhment is appointed, as in caſes for ſervants wages, and the like, it ſeemeth that a *ſummons* is the more proper

proper proceſs; and for default of appearance the juſtice may proceed: and ſo indeed oftentimes it is directed by ſpecial ſtatutes.

II. What is to be done previous to the granting of it.

It is convenient, tho' not always neceſſary, that the party who demands the warrant be firſt examined on oath, touching the whole matter whereupon the warrant is demanded, and that examination put into writing. 1 *H. H.* 582. 2 *H. H.* 111.

Or at leaſt it is ſafe to bind him over to give evidence; leſt afterwards when the offender ſhall be apprehended, or ſhall ſurrender himſelf, the party that procured the warrant be gone. *Dalt. c.* 169.

III. How far it is grantable on ſuſpicion.

Lord *Hale* proves at large, contrary to the opinion of lord *Coke* (4 *Inſt.* 177.) that a juſtice hath power to iſſue a warrant to apprehend a perſon ſuſpected of felony, before he is indicted; and that, tho' the original ſuſpicion be not in himſelf, but in the party that prays his warrant. 2 *H. H.* 107—110.

For the juſtices are judges of the reaſonableneſs of the ſuſpicion, and when they have examined the party accuſing, touching the reaſons of his ſuſpicion, if they find the cauſes of ſuſpicion to be reaſonable, it is now become the juſtices ſuſpicion as well as theirs. 2 *H. H.* 80.

And in another place ſpeaking of this opinion of lord *Coke*, he delivers himſelf ſeemingly with a kind of warmth not uſual to him: I think, ſays he, the law is not ſo, and the conſtant practice in all caſes hath obtained againſt it, and it would be pernicious to the kingdom if it ſhould be as lord *Coke* delivers it; for malefactors would eſcape unexamined and undiſcovered, for a man may have a probable and ſtrong preſumption of the guilt of a perſon, whom yet he cannot poſitively ſwear to be guilty. 1 *H. H.* 579.

Mr. *Hawkins* likewiſe ſeems to be of the ſame opinion againſt lord *Coke*, but delivereth himſelf with his wonted caution and candour: It ſeems probable, he ſays, that the practice of juſtices of the peace in relation to this matter, is now become a law, and that a juſtice may juſtify the granting of a warrant for the arreſt of any perſon, upon ſtrong grounds of ſuſpicion, for a felony or other miſdemeanor, before any indictment hath be found againſt him; yet

yet inaſmuch as juſtices claim this power rather by connivance, than any expreſs warrant of law, and ſince the undue execution of it may prove ſo highly prejudicial to the reputation as well as the liberty of the party, a juſtice cannot well be too tender in his proceedings of this kind, and ſeems to be puniſhable not only at the ſuit of the king, but alſo of the party grieved, if he grant any ſuch warrant groundleſly and maliciouſly, without ſuch a probable cauſe as might induce a candid and impartial man to ſuſpect the party to be guilty. 2 *Haw.* 85.

But a general warrant, upon a complaint of a robbery, to apprehend *all perſons ſuſpected*, and to bring them before a juſtice, hath been ruled void; and falſe impriſonment lies againſt him that iſſues ſuch a warrant. 1 *H. H.* 580. 2 *H. H.* 112.

IV. The form it.

1. Mr. *Dalton* ſays, the warrant is the better, if it bear date of the place where it was made. *Dalt. c.* 169.

And lord *Hale* ſays, the place, tho' it muſt be alledged in pleading, need not be expreſſed in the warrant. 2 *H. H.* 111.

And Mr. *Hawkins* ſays, It is ſafe, but perhaps not neceſſary, in the body of the warrant to ſhew the place where it was made; yet it ſeems neceſſary to ſet forth the county in the margin at leaſt, if it be not ſet forth in the body. 2 *Haw.* 85.

2. It may be directed to the ſheriff, bailiff, conſtable, or to any indifferent perſon by name who is no officer; for the juſtice may authorize any one to be his officer, whom he pleaſes to make ſuch; yet it is moſt adviſable to direct it to the conſtable of the precinct wherein it is to be executed, for that no other conſtable, and *a fortiori* no private perſon, is compellable to ſerve it. 2 *Haw.* 85. *Dalt. c.* 169. 2 *H. H.* 110.

But in the caſe of an act of parliament, it is ſaid, that if the act directeth that a juſtice ſhall grant a warrant, and doth not ſay to whom it ſhall be directed, by conſequence of law it muſt be directed to the conſtable, and it cannot be directed to the ſheriff, unleſs ſuch power is given in the act. L. *Raym.* 1192. 2 *Salk.* 381.

3. The warrant may be ſtiled in divers manners: As 1. In the name of the king; and yet the teſte muſt be under the name of the juſtice that grants it out. Or, 2. It may be ſtiled and made only in the name of the juſtice. Or, 3. It may be made without any ſuch ſtile, and only

under

under the teſte of the juſtice, or only ſubſcribed by him. As followeth:

In the king's majeſty's name.

Weſtmorland. GEORGE *the ſecond, by the grace of god, of* Great Britain, France, *and* Ireland, *king, defender of the faith, and ſo forth; To our ſheriff of the county of* ——— *to the high conſtables of the hundred of* ——— *in the ſame county, and to the petty conſtables of the town of* ——— *in the ſame county, and to all and ſingular our bailiffs and miniſters in the ſame county, as well within liberties, as without, greeting:*

Foraſmuch as A. I. *of* —— *hath come before* J. P. *eſquire, one of our juſtices aſſigned to keep our peace within the ſaid county, and hath* &c.

(Concluding it in the juſtice's name, as thus;) *Witneſs the ſaid* J. P. *at* —— *the* —— *day of* ——.

Note, That whereſoever the warrant is made in the king's name, there it ought to be directed to all miniſters as well within liberties as without, for that the king is made a party: And ſo it may be done in all other warrants, eſpecially for felony, or for the peace or the good behaviour, becauſe it is the ſervice of the king. *Dalt. c.* 174.

Or thus, in the name of the juſtice himſelf.

Weſtmorland. J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county; To the ſheriff of the ſaid county, to the bailiff or conſtables of the hundred of* —— *within the ſaid county, to the petty conſtables of the town of* ——— *within the ſaid hundred and county, and to all other the miniſters and officers of our ſaid lord the king within the ſaid county, and to every of them greeting:*

Foraſmuch as &c. *Given under my hand and ſeal the* —— *day of* &c. Dalt. c. 174.

4. Regularly, the warrant, eſpecially if it be for the peace or good behaviour, or the like, where ſureties are to be found or required, ought to contain the ſpecial cauſe and matter, whereupon it is granted, to the intent that the party upon whom it is to be ſerved, may provide his ſureties ready, and take them with him to the juſtice to be bound for him; but if the warrant be for treaſon, murder,

or

or felony, or other capital offence, or for great conſpiracies, rebellious aſſemblies, or the like, it needs not contain any ſpecial cauſe, but there the warrant of the juſtice may be to bring the party before him, to make anſwer to ſuch things or matters generally, as ſhall be objected againſt him on the king's behalf. *Dalt. c.* 169. 2 *Haw.* 85. 2 *H. H.* 111.

But Mr. *Lambard* ſays, every warrant made by a juſtice of the peace ought to comprehend the ſpecial matter upon which it proceedeth; even as all the king's writs do bear their proper cauſe in their mouth with them: And as for the form that is commonly uſed, *to anſwer to ſuch things as ſhall be objected*, and ſuch like, they were not fetched out of the old learned precedents, but lately brought in by ſuch as either knew not, or cared not, what they writ. *Lamb.* 87.

5. The warrant ought regularly to mention the name of the party to be attached, and muſt not be left in generals, or with blanks to be filled up by the party afterwards. 2 *H. H.* 114. *Dalt. c.* 169.

6. The warrant may iſſue to bring the party before the juſtice who granted the warrant ſpecially, and then the officer is bound to bring him before the ſame juſtice; but if the warrant be to bring him before any juſtice, then it is in the election of the officer to bring him before what juſtice of the county he thinks fit, and not in the election of the priſoner. 1 *H. H.* 582. 2 *H. H.* 112.

7. It ought to ſet forth the year and day wherein it is made, that in an action brought upon an arreſt by virtue of it, it may appear to have been prior to ſuch arreſt; and alſo, in caſe where a ſtatute directeth the proſecution to be within ſuch a time, that it may appear, that the proſecution is commenced within ſuch time limited: Likewiſe, where a penalty is given to the poor of the pariſh where the offence ſhall be committed, or the like, it ought to ſpecify the place where the offence was committed. 2 *Haw.* 85.

8. Finally, it ought to be under the hand and ſeal of the juſtice who makes it out. 2 *Haw.* 85.

The execution of a warrant belongs to title Arreſt.

Watch.

WATCHING is properly intended of the night, and warding for the day time. *Dalt. c.* 104. Watch and ward.

Watches are of three kinds:

1. That which is appointed by the ſtatute of *Winchester*, *c.* 4. and is inforced by the 5 *H.* 4. *c.* 3. which is, *That from* Aſcenſion day *to* Michaelmas, *in every city* 6 *men ſhall keep watch at every gate, in every borough* 12 *men, every town* 6 *or* 4 *according to the number of the inhabitants, and ſhall watch the town continually all night, from the ſun ſetting to the ſun riſing.* 13 Ed. 1. ſt. 2. c. 4. By the ſtatute of Winchester.

This watch is to be ſet by the conſtable, and their power is this: *If any ſtranger do paſs by them, he ſhall be arreſted until morning, and if no ſuſpicion be found he ſhall go quit; and if they find cauſe of ſuſpicion, they ſhall forthwith deliver him to the ſheriff, until he be acquitted in due manner. And if they will not obey the arreſt, they ſhall levy hue and cry upon them.* id.

Inhabitants] It hath been reſolved, that a ſtranger, who is not an inhabitant, cannot hereby be compelled to keep watch. 2 *Haw.* 80.

Deliver him to the ſheriff] That is, to the common gaol. 2 *H. H.* 96.

2. But this watch only extends between *Aſcenſion day* and *Michaelmas*; but there is another watch that may be kept by the conſtable *ex officio*, which may extend to other times; as by the 5 *Ed.* 3. *c.* 14. for night walkers, and perſons ſuſpicious by night or day. 2 *H. H.* 97. By the conſtable.

And altho' a conſtable is not bound to any preciſe time for this kind of watch, nor puniſhable if he omit it, barely for the omiſſion, if he be ready upon occaſion to do his office when required in theſe caſes; yet it is in his power to hold ſuch watches, as often as he pleaſes, and it is convenient and juſtifiable: and herein the watchmen are the miniſters and aſſiſtants of the conſtable, and are under the ſame protection with him, and may act as he doth. 2 *H. H.* 97.

Yea it is holden, that every private perſon may by the common law arreſt any ſuſpicious night walker, and detain him till he give a good account of himſelf. 2 *Haw.* 80.

3. There is alſo another kind of watch, which is by authority of the juſtices of the peace, which alſo may be held at By the juſtices.

other times than the above ſtatute of the 13 *Ed.* 1. appoints; and the watch thus appointed hath the ſame power as either of the former: And this ſeems to be within the power of any one juſtice, by the firſt aſſignment in the commiſſion; but the ſafer way, and more uſual is, by order of ſeſſions. *Lamb.* 186. 2 *H. H.* 97. *Dalt. c.* 104.

Who ſhall watch.

4. It ſeems to be agreed, that every inhabitant is bound to keep watch in his turn, or to find another. 2 *Haw.* 80.

But they are not compellable to watch at the will of the conſtable, but only when their turn cometh; which was the ancient cuſtom at common law. *Dalt. c.* 104.

And the watching and warding ought to be by men able of body, and ſufficiently weaponed. *Dalt. c.* 104.

And therefore a woman required to watch, may procure one to watch for her. *Comb.* 243.

Perſons taken by watchmen.

5. If a watchman take any one for ſuſpicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an eſcape. *Dalt. c.* 159.

And if a perſon will not obey the arreſt of the watchmen, they may levy hue and cry upon him, that he may be taken; or elſe they may juſtify to beat him, for that he reſiſteth the peace and juſtice of the realm; and may alſo ſet him in the ſtocks for the ſame until the morning. *Dalt. c.* 104.

And the watchmen may deliver ſuch perſons to the conſtable, or may convey them to a juſtice, to be examined, and to be bound over or committed, until they be acquitted in due manner. *Dalt. c.* 104.

Indemnity of watchmen.

6. A watchman hath a double protection of the law: 1. As an aſſiſtant to the conſtable, when the conſtable is preſent or in the watch; for ſo every man who is aſſiſting to the conſtable in the execution of his office, hath the ſame protection that the law gives the conſtable. 2. Purely as a watchman ſet by order of law; and the law takes notice of his authority *ſub eo nomine*, and therefore killing of a watchman in execution of his office, is murder. 2 *H. H.* 98. 3 *Inſt.* 52. 9 *Co.* 66.

And if a watchman be killed in endeavouring to apprehend a burglar, his executors ſhall be intitled to 40*l.* reward. 5 *An. c.* 31. *ſ.* 2.

Puniſhment for not watching.

7. If any perſon refuſe to watch in his turn, at the commandment of the conſtable, he may preſent the default at the aſſizes or ſeſſions, or may complain thereof to any juſtice of the peace, who may bind the offender to the good behaviour, and ſo over to the next ſeſſions.

Dalt.

Dalt. c. 104. And there he may be indicted. 2 *Haw.* 80.

But here it is to be noted, that in *Cro. El.* 204. which Mr. *Dalton* cites for his authority in this matter, it is not ſaid, that the juſtice may bind him to the good behaviour, but only thus, ——— that he may inflict puniſhment upon the refuſer.

Warrant for the keeping of Watch.

Weſtmorland. { To the conſtable of the hundred of —— in the ſaid county.

AT *a general quarter ſeſſions of the peace holden at* —— *in and for the ſaid county, before us* ——— *eſquires, juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors in the ſaid county committed, You are hereby required forthwith to iſſue your warrants to the ſeveral petty conſtables within your ſaid hundred, that they do cauſe watch to be kept by night, and ward by day, with able men, within and throughout their reſpective conſtablewicks, from the* ——— *day of* ——— *now next enſuing, unto the* ——— *day of* ——— *then next following; and that they do apprehend or cauſe to be apprehended all rogues, vagabonds, and other wandring, idle, and diſorderly perſons, and carry them before ſome of his majeſty's juſtices of the peace in and for the ſaid county, to be examined and further dealt withal according to law. Given under our hands and ſeals, the day and year firſt above-written.*

Commitment of a perſon apprehended by the watch.

Weſtmorland. { To the conſtable of —— and to the keeper of the houſe of correction at ——

WHEREAS A. O. *was this day brought before me* J. P. *eſquire, one of the juſtices of our lord the king, aſſigned to keep the peace within the ſaid county, the ſaid* A. O. *having been taken laſt night by the watch ſet by the conſtable of* ——— *and charged with wandring abroad at unſeaſonable times of the night, and alſo with other diſorderly behaviour, and not now giving a good account of himſelf before me: Theſe are to require you the ſaid conſtable of* ——— *to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——

aforeſaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you the ſaid keeper of the houſe of correction aforeſaid, to receive the ſaid A. O. *into your cuſtody in the ſaid houſe of correction, and him there ſafely to keep until the next general quarter ſeſſions of the peace to be holden in and for the ſaid county, allowing unto him in the mean time ſuch maintenance as he ſhall deſerve by his labour; and have you him then there, together with this precept. Given under my hand and ſeal, at —— in the ſaid county, the —— day of —— in the —— year of the reign of ——*

Indictment for not watching.

THE *jurors for our lord the king upon their oath preſent, that* A. O. *of —— in the ſaid county, yeoman, on the —— day of —— in the —— year of the reign of —— and long before, and always after unto the day of the taking of this inquiſition, was, and yet is, an inhabitant of the town of —— aforeſaid, in the county aforeſaid, and that the ſaid* A. O. *then and there, to wit, on the ſaid —— day of —— in the year aforeſaid, at —— aforeſaid, in the county aforeſaid, was duly ſummoned in his turn to watch with the conſtable of —— aforeſaid, in the night of the ſame day; nevertheleſs the ſaid* A. O. *his duty in that behalf not regarding, did not watch in the ſaid night of the ſame day, in the year aforeſaid, nor in any part of the ſaid night, with the ſaid conſtable at —— aforeſaid in the county aforeſaid, but did then and there utterly refuſe ſo to do, and wilfully and obſtinately therein did make default; in contempt of our ſaid lord the king, and of his laws, and againſt the peace of our ſaid lord the king, his crown and dignity.*

Watchmaking. See **Servants.**
Watermen. See **Thames.**

Weights and meaſures.

THE particular weights and meaſures of different ſorts of goods, may be ſeen under their reſpective titles: and what is treated of here, is touching weights and meaſures in general.

I. Of

I. Of the different kinds of weights and meaſures.
II. Standard of weights and meaſures to be kept in market towns.
III. Mayors and other officers to ſeal and regulate meaſures.
IV. Puniſhment of mayors and other officers for omitting their duty.

I. Of the different kinds of weights and meaſures.

Divers weights.

1. Notwithſtanding the many ſtatutes which have enacted, that there ſhall be but one weight and one meaſure, throughout the realm, there always have been, and ſtill are two kinds of weights uſed in *England*, and both warrantable; the one by law, and the other by cuſtom; but they are for ſeveral ſorts of wares or commodities: for there is *troy* weight, and *averdupois*. *Dalt. c.* 112.

Troy weight.

2. *Troy* weight is by law; and thereby are weighed ſilk, gold, ſilver, pearl, and precious ſtones. And this hath to the pound 12 ounces. *Dalt. c.* 112.

Averdupois weight.

3. *Averdupois*, (which in *French* is as much as to ſay to have full weight) is by cuſtom, yet confirmed by ſtatute; and thereby are weighed all kind of grocery wares, drugs, butter, cheeſe, fleſh, wax, pitch, tar, tallow, wool, hemp, flax, iron, ſteel, lead, and all other commodities which bear the name of garble, and whereof iſſueth a refuſe or waſte; (and alſo bread, by the 8 *An. c.* 18.) And this hath to the pound 16 ounces; and 12 pounds over are allowed to every hundred. *Dalt. c.* 112.

Divers meaſures.

4. And no leſs do the meaſures alſo differ in different places. Thus Mr. *Dalton* obſerves, that the buſhel of corn in one place is greater than in another; and it ſeems, he ſays, that the cuſtom of the place is to be obſerved: Yet he makes a *quæry* upon it, becauſe it is contrary to the great charter, and divers other ſtatutes; and cuſtom or preſcription againſt a ſtatute ſeemeth not good. *Dalt. c.* 112.

II. Standard of weights and meaſures to be kept in market towns.

Standard to be kept in market towns, at which all may weigh.

In every city, borough, and market town, a common balance ſhall be, with common weights ſealed, and according to the ſtandard of the exchequer, upon the common coſts of ſuch city, borough, or market town, in the keeping of the mayor, or conſtable; on pain of 10 *l.* for ſuch city making default, borough 5 *l.* and market town 40 *s.*

At which balance all the inhabitants may freely weigh without any thing paying; taking nevertheleſs of foreigners, for every draught within the weight of 40 *lb.* a farthing, and for every draught betwixt 40 *lb.* and 100 *lb.* an half penny, and for every draught betwixt 100 *lb.* and 1000 *lb.* a penny.

And juſtices of the peace, mayors, bailiffs, and ſtewards of franchiſes may enquire of offenders againſt this ordinance, and do execution of them that be found faulty. 8 *H.* 6. *c.* 5. 11 *H.* 7. *c.* 4.

III. Mayors and other officers to ſeal and regulate meaſures.

Meaſures to be ſealed.

1. The clerk of the market, and where there is none, the mayor, or head officer, or other perſon having benefit of the market, ſhall cauſe to be ſealed all meaſures duly guaged, by the ſtandard which he ſhall have out of the exchequer. 22 & 23 *C.* 2. *c.* 12. *ſ.* 4.

Fee for the ſame.

2. For which he ſhall be paid, 1 *d.* for the ſealing and marking of a buſhel, an halfpenny for a peck or half peck, and a farthing for a gallon, pottle, quart, pint, or half pint. 22 *C.* 2. *c.* 8. *ſ.* 4.

Penalty of uſing any other.

3. And whoſoever ſhall ſell by any other weight, meaſure, or yard, not according to the ſtandard, or keep any ſuch whereby any thing is bought or ſold, ſhall forfeit 5 *s.* on conviction before one juſtice, or mayor, on oath of one witneſs; to be levied by the churchwardens and overſeers, or ſome of them, to the uſe of the poor, by diſtreſs. In default of diſtreſs, impriſonment till paid. 16 *C.* *c.* 19. *ſ.* 2.

But water meaſure (*viz.* 5 pecks to the buſhel, *Dalt.* *c.* 112.) in ſea port towns ſhall continue as uſual. *id.* *ſ.* 7. Except in the meaſuring of corn and ſalt. 22 *C.* 2. *c.* 8. *ſ.* 2.

Weights to be examined.

4. And the mayors, and other head officers in market towns, ſhall twice a year or oftner cauſe all weights and meaſures within the ſame, to be brought before them, and examined; and ſuch as they find defective, to be broken and burnt; and the offender ſhall forfeit to the mayor or other officer, for the firſt time, 6 *s.* 8 *d.* for the ſecond time 13 *s.* 4 *d.* and the third time 20 *s.* and be ſet on the pillory:

And two juſtices (1 *Q.*) may hear and determine theſe offences, as well by examination as by inquiry, and ſet fines and amerciaments, and make proceſs thereupon, as if they were indicted before them for breaking of the king's peace. 11 *H.* 7. *c.* 4.

Conſtables to ſearch.

5. Alſo, the conſtable ſhall ſearch, if any perſons uſe any other meaſure than according to the ſtandard; or ſhall ſtrike

in

in any other manner, than even by the wood or brim; or ſhall ſell or buy by a meaſure unſealed; and if he find any unſealed meaſure, he ſhall break the ſame, and ſhall preſent the offenders at the next private or quarterly ſeſſions. 22 *C.* 2. *c.* 8. *ſ.* 6.

IV. Puniſhment of mayors and other officers for omitting their duty.

1. If any mayor, lord of the liberty, or other perſon authorized to mark or ſeal meaſures, ſhall neglect or refuſe, being required, to ſeal or mark any buſhel, half buſhel, or peck duly gaged; he ſhall forfeit for the firſt offence 5 *l.* and for every other offence 10 *l.* on conviction by preſentment or indictment at the county ſeſſions; half to the proſecutor, and half to the poor; to be levied by diſtreſs; and for default of diſtreſs, to be impriſoned by warrant of the ſaid juſtices till payment be made. 22 *C.* 2. *c.* 8. *ſ.* 3, 4. Penalty of refuſing to ſeal.

2. Or if he ſhall take more than one penny for the ſealing and marking of a buſhel, or more than a halfpenny for a half buſhel or peck, or more than a farthing for a gallon, pottle, quart, pint, or half pint; he ſhall forfeit 5*s.* to the poor, on conviction before one juſtice, by the oath of one witneſs; to be levied by the churchwardens or overſeers, by diſtreſs; in default of diſtreſs, impriſonment till paid. 22 *C.* 2. *c.* 8. *ſ.* 4. Penalty on taking more than is due for ſealing.

3. And if any mayor or other head officer, ſhall ſuffer any other meaſure to be uſed than according to the ſtandard, and ſealed; he ſhall forfeit 5 *l.* half to the proſecutor, and half to the poor, on conviction by preſentment or indictment at the county ſeſſions, by diſtreſs: for default of diſtreſs, to be impriſoned by warrant of the juſtices till paid. 22 *C.* 2. *c.* 8. *ſ.* 3. Penalty of ſuffering other meaſures.

4. And generally, by the 16 *C. c.* 19. *ſ.* 5. If any mayor, or other officer, or any lords of liberties or their agents, ſhall receive any fines or fees, other than are allowed by ſtatute or cuſtom; or ſhall take any fee for the marking, ſigning, or examination of any weights or meaſures, which have been formerly marked or ſealed; or ſhall impoſe any fine without a due and legal trial of the offence; or ſhall otherwiſe miſdemean himſelf in the execution of his office; he ſhall forfeit to the poor for the firſt offence 5 *l.* for the ſecond 10 *l.* and for the third and every other offence 20 *l.* on conviction before one juſtice, on the oath of one witneſs; to be levied by the churchwardens or overſeers by diſtreſs; for want of diſtreſs, impriſonment till paid, 16 *C. c.* 19. *ſ.* 5. General penalty for neglect of duty.

Acts to be given in charge.

5. And all juſtices of the peace, conſtables, and other officers ſhall ſee the acts abovementioned of the 22 *C.* 2. *c.* 8. and 22 & 23 *C.* 2. *c.* 12. put in due execution; and the juſtices of aſſize, and of the ſeſſions, ſhall preſs the ſame in their charges to the grand juries. 8 *An. c.* 18. *ſ.* 12.

But after all, notwithſtanding the puniſhments aforeſaid, appointed by ſtatute, for ſelling by falſe weights and meaſures; yet the ſame is alſo an offence at the common law, and conſequently may be puniſhed by indictment, fine, and impriſonment.

Wife.

Woman marrying pending an action.

1. T. 2 *G.* 2. *King* and his wife againſt *Jones.* The plaintiff *Jones* declared againſt *Judith Parnell*, upon ſeveral promiſes. She by the name of *Judith King* appears by attorney, and pleads *non aſſumpſit.* And after a verdict for the plaintiff, ſhe and *Edward King* bring a writ of error, and aſſign for error, that ſhe has appeared and pleaded as a feme ſole, whereas at the time of her appearance and plea ſhe was married to the ſaid *Edward King.* But by the court, This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we muſt take it, that at the time of bringing the action the defendant was a feme ſole, becauſe they pretend to carry it back no farther than the appearance. And plaintiffs would be in a fine condition, if after they have arreſted a woman, ſhe ſhall be allowed to overthrow their proceedings by a ſubſequent marriage. And the judgment was affirmed. *Str.* 811.

Committing offences with her huſband.

2. A wife, or feme covert, is ſo much favoured in reſpect of that power and authority which her huſband has over her, that ſhe ſhall not ſuffer any puniſhment for committing a bare theft, in company with, or by coercion of her huſband. 1 *Haw.* 2.

But if ſhe commit a theft of her own voluntary act, or by the bare command of her huſband; or be guilty of treaſon, murder, or robbery, in company with, or by coercion of her huſband, ſhe is puniſhable as much as if ſhe were ſole, becauſe of the odiouſneſs and dangerous conſequence of theſe crimes. 1 *Haw.* 2. 1 *H. H.* 47. *Dalt. c.* 157.

And the coercion of the huſband is only a preſumption till the contrary appear; for if upon the evidence it can clearly appear, that the wife was not drawn to it by the huſband, but that ſhe was the principal actor and inciter of it,

it, ſhe ſeems to be guilty as well as the huſband. 1 *H. H.* 516.

3. A wife ſhall not be deemed acceſſary to a felony for receiving her huſband who has been guilty of it; as her huſband ſhall be for receiving her: becauſe ſhe is under the power of her huſband, and ſhe is bound to receive him. 1 *Haw.* 2. 1 *H. H.* 47. Acceſſary in receiving her huſband.

4. But a wife may be indicted together with her huſband, and condemned to the pillory with him for keeping a bawdy houſe; for this is an offence as to the government of the houſe, in which the wife has a principal ſhare; and alſo ſuch an offence as may generally be preſumed to be managed by the intrigues of her ſex. 1 *Haw.* 2. Keeping a bawdy houſe.

5. And generally, a married woman ſhall anſwer as much as if ſhe were ſole, for any offence not capital, againſt the common law or ſtatute; and if it be of ſuch a nature that it may be committed by her alone, without the concurrence of the huſband, ſhe may be puniſhed for it without the huſband, by way of indictment; which being a proceeding grounded merely on the breach of the law, the huſband ſhall not be included in it for an offence to which he is no way privy. But if a wife incur the forfeiture of a penal ſtatute, the huſband may be made a party to an action or information for the ſame (as he may generally to any ſuit for a cauſe of action given by his wife), and ſhall be liable to anſwer what ſhall be recovered thereupon. 1 *Haw.* 3. Wife to ſuffer corporally; but the huſband to pay the forfeiture.

6. If a wife willingly leave her huſband, and go away, and continue with her advouterer, ſhe ſhall be barred for ever of action to demand her dower. 13 *Ed.* 1. *ſt.* 1. *c.* 34. Eloping.

M. 12 *G. Morris* and *Martin.* Action for meat and other things provided for the defendant's wife. The defendant proved ſhe went away from him with an adulterer. *Raymond* Ch. J. held, that the huſband ſhould not be charged for neceſſaries for her, tho' the plaintiff who provided for her had no notice; and he ſaid, Ch. J. *Holt* always ruled it ſo. *Str.* 647.

T. 12 *G. Maimwaring* and *Sands.* In an action againſt the huſband for a laced head ſold to the wife, it was proved, that the wife lived from her huſband in adultery, and that ſhe told the plaintiff ſhe had a huſband, but that ſignified nothing, for ſhe would pay him her ſelf. *Raymond* Ch. J. held the defendant not chargeable, and ſaid he ſhould have ruled it ſo, if there had been no actual notice, which only ſtrengthened the caſe. *Str.* 706.

T. 4 *G.* 2. *Child* and *Hardyman.* Action for linen ſold to the defendant's wife. Upon *non aſſumpſit*, the delivery was proved. And the defendant proved that ſhe had lived

in a very lewd manner; one Mr. *Nott* frequently coming to her at her husband's house, and they were locked up together in a bed-chamber; and other indecencies passed between them. And it was also proved, that she several times went to the house of this *Nott*, a gentleman in *Wiltshire*, who lived within three miles of the defendant's house. It did not appear farther, than that he disliked her going and staying at Mr. *Nott*'s. But under these circumstances, the husband and wife continued to live together. Afterwards, she went away from him, and went to *Marlborough*, where she resided for some time; but after the leaving her husband's house, it did not appear that she ever saw Mr. *Nott*, or lived in a lewd manner. After some time, she sent *Lucas* an attorney to her husband, to desire that he would receive her again; the husband told him, that if she came again, she should never sit at the upper end of his table, nor have the government of the children, but should live in a garret. Then *Lucas* proposed to him, to make her an allowance, and proposed about 80 or 100 *l.* a year, he being worth about 5 or 600 *l.* a year. But that was not complied with; and afterwards she came to *London*, and bought the linen to the amount of 53 *l.* By *Raymond* Ch. J. If a woman elopes from her husband, tho' she does not go away with an adulterer, or in an adulterous manner; the tradesman trusts her at his peril, and the husband is not bound. And this hath been so adjudged in 2 or 3 cases. Indeed if he refuse to receive her again, from that time it may be an answer to the elopement. In this case he doth not absolutely refuse to receive her again; but that she should neither sit at his table, nor have any government of the children, but should be kept in a garret; and she deserved no better usage. And the plaintiff was nonsuit. *Str.* 875.

M. 18 *G.* 2. *Bolton* and *Prentice*. In *assumpsit* for goods sold and delivered to the defendant's wife, the case appeared to be, that the defendant and his wife had formerly lodged at the plaintiff's house, and the plaintiff furnished her with goods; and the defendant finding the plaintiff had helped her to pawn her watch, and suspecting he confederated with her, left the lodgings, after paying the plaintiff his bill, and forbidding him ever trusting her again. After this the defendant and his wife cohabited together for a year; when, without any cause appearing, he left her, locked up her cloaths, and upon her finding him out, refused to admit her, and struck her, and declared he would not maintain her, or pay any body that did. In this distress, she borrowed cloaths of her friends, and applied to the plaintiff, who furnished her with necessaries according to the defendant's degree; which the defendant refusing to pay for,

this

this action was brought; and upon trial the jury found for the plaintiff. Upon motion for a new trial, the court held the verdict was right; for whilſt they were at the plaintiff's, there was a particular reaſon for the particular prohibition; yet the cauſeleſs turning her away deſtitute afterwards, gave her the general credit again: and if a huſband ſhould be allowed, under the notion of a particular prohibition, to deſtroy her obtaining credit in one place, he may in the ſame manner prevent it with all people ſhe is acquainted with. He appears to be a wrong doer, and therefore has no right to prohibit any body. They diſtinguiſhed this caſe from the caſe of *Manby* and *Scot*, 1 *Sid.* 109. for there the wife was guilty of the firſt wrong in eloping. *Str.* 1214.

Carrying her away with the huſband's goods.

7. Of women carried away (*viz.* violently, or againſt their wills, 2 *Inſt.* 435.) with the goods of their huſbands, the king ſhall have the ſuit for the goods ſo taken away, 13 *Ed.* 1. *ſt.* 1. *c.* 34. That is, it ſhall be felony. And ſo, if any man takes another man's wife, with her huſband's goods, againſt the huſband's will, this is alſo felony. *Dalt. c.* 157.

Wife taking the huſband's goods.

8. But a wife herſelf cannot feloniouſly take her huſband's goods; and tho' ſhe ſo takes her huſband's goods, and delivers them to a ſtranger, yet it is no felony in the ſtranger. *H. Pl.* 65. 1 *Haw.* 93.

Guilty of forcible entry.

9. A married woman, by her own act (but not in reſpect of what is done by others at her command, becauſe all ſuch commands of hers are void) may commit a forcible entry or detainer; and upon the juſtice's view of the force, ſhe ſhall be impriſoned therefore, and ſhe may be fined in ſuch caſe: but ſuch fine ſet upon the wife, ſhall not be levied upon the huſband; for the huſband ſhall never be charged for the act or default of his wife, but when he is made a party to the action, and judgment given againſt him and his wife. *Dalt. c.* 126. 9 *Co.* 72. 11 *Co.* 61.

Guilty of ſlander, treſpaſs, or aſſault.

10. Likewiſe if ſhe ſhall commit any riot, or do any treſpaſs or other wrong, ſhe is puniſhable for it; and for a treſpaſs done by the wife, or for a ſcandal publiſhed by her, the action lieth againſt both the huſband and wife, and there the huſband is chargeable to the damages or fine, becauſe he is party to the action and judgment: but if a wife without her huſband be indicted of a treſpaſs, riot, or any other wrong, there the wife ſhall anſwer, and be party to the judgment only; and in ſuch caſe, the fine ſet upon the wife ſhall not be levied upon the huſband; yet after the huſband's death, ſuch damages or fines ſhall then be levied of the wife her ſelf; and as for impriſonment, or other corporal pain, it ſhall be inflicted upon the wife only, and not

not upon the huſband for his wife's act or default. *Dalt. c.* 139.

M. 19 *G.* 2. *Finch* and his wife againſt *Duddin* and his wife. In an action for a battery of the plaintiff's wife by the defendant's wife, there was judgment for the plaintiffs, and the wife of the defendant was only taken in execution. She moved to be diſcharged, but upon affidavits of endeavours to take the huſband, and it not appearing there was any deſign to ſcreen him, the court refuſed it, on the authority of *Pitt* and *Meller*. *Str.* 1237.

Which caſe of *Pitt* and *Meller*, *T.* 15 *G.* 2. was thus: In trover againſt both, and judgment and execution againſt both; the wife petitioned to be diſcharged out of cuſtody; which the court refuſed, unleſs it could be ſhewn, that there was fraud and colluſion between the plaintiff and the huſband, to keep her there. *Str.* 1167.

M. 10 *G. Tarrant* and *Mawr*. The wife libelled in the ſpiritual court for calling her whore, and there being proceedings likewiſe for defamation againſt *her* by the other, the two huſbands enter into an agreement to ſtay proceedings on both ſides; and upon one of the wives going on, the huſband moved for a prohibition; but it was denied: for by the court, the ſuit is by the wife, to recover her fame, and it is not in the power of the huſband to reſtrain her. *Str.* 576.

Receiving ſtolen goods.

11. If a woman receive ſtolen goods into her houſe, knowing them ſo to be; or ſhall lock them up in her cheſt or chamber, her huſband not knowing thereof; if her huſband, ſo ſoon as he knoweth thereof, do forthwith forſake his houſe, and her company, and make his abode elſewhere, he ſhall not be charged for her offence; whereas otherwiſe, the law will impute the fault to him, and not to her. *Dalt. c.* 157.

Guilty of conſpiracy with her huſband.

12. A proſecution for conſpiracy is not maintainable againſt a huſband and wife only; becauſe they are eſteemed but as one perſon in law, and are preſumed to have but one will. 1 *Haw.* 192.

Woman ſervant marrying.

13. If a woman who is a ſervant ſhall marry, yet ſhe muſt ſerve out her time, and the huſband cannot take her out of her maſter's ſervice. *Dalt. c.* 58.

Wife hiring to be a ſervant.

14. Alſo if a married man and his wife do bind themſelves to ſerve, they ſhall be compelled to ſerve, according to their covenant or agreement. *Dalt. c.* 58.

Killing her huſband, petty treaſon.

15. If the wife maliciouſly kill her huſband, it is petty treaſon; but if the huſband maliciouſly kill his wife, it is but murder. *Dalt. c.* 142.

Evidence for or againſt her huſband.

16. Huſband and wife cannot be witneſſes for one another; nor regularly againſt one another. 2 *Haw.* 431.

But

But a wife may demand ſurety of the peace againſt her huſband threatning to beat her outrageouſly, and a huſband alſo may have it againſt his wife. 1 *Haw.* 127.

And in other criminal caſes, the wife may be a witneſs againſt her huſband, where ſhe is the party grieved; but not in civil caſes. *Dalt. c.* 164.

17. A wife cannot be bound herſelf by recognizance, but her ſureties only. *Dalt. c.* 117. Cannot be bound by recognizance.

18. She may ſurrender a leaſe in the court of chancery or exchequer, in order to renew the ſame. 29 *G.* 2. *c.* 31. May make a ſurrender.

Windows.

I. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

III. Third meeting; ſigning the aſſeſſment, with warrant to collect.

IV. Fourth meeting; the appeal.

V. Collecting.

VI. Collector paying to the receiver.

VII. Receiver paying into the exchequer.

VIII. Duplicates to be tranſmitted into the exchequer.

IX. General penalty on officers not doing their duty.

X. Indemnity of officers in doing their duty.

I. Firſt meeting of the commiſſioners, for the iſſuing precepts to return aſſeſſors.

1. COmmiſſioners of the land tax ſhall be commiſſioners for the duties on houſes and windows. 20 *G.* 2. *c.* 3. *ſ.* 6. Commiſſioners of theſe duties.

But no commiſſioner of the land tax ſhall act as commiſſioner of theſe duties, unleſs duly qualified, (that is, unleſs he be taxed at 100*l.* a year in the county or diviſion, except certain counties in *Wales*, as by the land tax acts) on pain of 20*l.* to be levied as other penalties by this act. 21 *G.* 2. *c.* 10. *ſ.* 3.

But they ſhall not be obliged to take the oaths, and ſubſcribe the declaration, and receive the ſacrament, as directed

rected by the 25 *C.* 2. *c.* 2. as other perſons qualifying for offices; but only to take the oaths of allegiance, ſupremacy, and abjuration, as by the land tax acts. 20 *G.* 2. *c.* 3. *ſ.* 27.

Time and place of meeting.

2. Which ſaid commiſſioners ſhall meet yearly, at the moſt uſual place of meeting, at ſuch time as ſhall be appointed for the firſt general meeting of the commiſſioners of the land tax, or on ſuch other day as they ſhall think proper, before *April* 30. yearly. 20 *G.* 2. *c.* 3. *ſ.* 6.

Subdividing.

3. And at ſuch firſt meeting, they may agree to ſubdivide themſelves and the other commiſſioners not then preſent, in ſuch manner as to them ſhall ſeem meet. *id. ſ.* 6.

Precept to return aſſeſſors.

4. Alſo, at ſuch firſt meeting, they or the major part of them then preſent, ſhall direct their ſeveral or joint precepts (A) to ſuch inhabitants, and ſuch number of them as they ſhall think moſt convenient, to be preſentors and aſſeſſors, requiring them to appear before the ſaid commiſſioners, at ſuch time and place as they ſhall appoint, not exceeding ten days. 20 *G.* 2. *c.* 3. *ſ.* 6.

Aſſeſſors in towns corporate.

5. But no perſon in a city, borough, or town corporate, ſhall be compelled to be an aſſeſſor or collector out of the limits thereof. 20 *G.* 2. *c.* 3. *ſ.* 18.

Collectors to return their laſt collection bills.

6. And the laſt collectors ſhall cauſe a copy of the aſſeſſments given to them, and of the collection made by them, to be fairly written and ſigned by them, but with ſuch alterations therein as ſhall be neceſſary, by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, or by reaſon of the change of inhabitants or occupiers of any houſe, or otherwiſe, or a true duplicate thereof, ſigned as aforeſaid, to be delivered to three or more commiſſioners yearly, within ten days after their firſt meeting. 20 *G.* 2. *c.* 3. *ſ.* 8.

So that it may be moſt proper to direct the precept for the laſt collectors to be aſſeſſors.

Aſſeſſors to take the oaths.

7. And every aſſeſſor, before he acts, ſhall take the oaths required by the 1 *W.* *c.* 18. before three commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which oaths are the oaths of allegiance and ſupremacy.

But quakers, inſtead of ſuch oaths, ſhall be allowed to make and ſubſcribe the declaration of fidelity, preſcribed by the ſaid act of the 1 *W.* *c.* 18. 20 *G.* 2. *c.* 42. *ſ.* 4.

Aſſeſſors refuſing.

8. Aſſeſſors refuſing to take the oaths, or their offices, ſhall forfeit 5 *l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3.

II. Second meeting; charge to the aſſeſſors, with the manner of laying the aſſeſſment.

1. The commiſſioners ſhall openly read, or cauſe to be read to the aſſeſſors, the ſeveral rates and duties, and openly declare the effect of their charge unto them, and how they ought to make their aſſeſſments. 20 *G.* 2. *c.* 3. *ſ.* 6. Charge to the aſſeſſors.

2. That is to ſay, For every dwelling houſe inhabited, ſhall be paid yearly 2*s.* 20 *G.* 2. *c.* 3. *ſ.* 2. Duty on houſes.

3. And for every window or light in every dwelling houſe, containing 10, 11, 12, 13, or 14 windows or lights, ſhall be paid moreover the yearly ſum of 6*d.* and for every window or light in every dwelling houſe as aforeſaid, containing 15, 16, 17, 17, or 19 windows, the yearly ſum of 9*d.* each; and for every window or light in every dwelling houſe as aforeſaid, containing 20 windows or lights, and upwards, the yearly ſum of 1*s.* each. 20 *G.* 2. *c.* 3. *ſ.* 3. Duty on windows.

4. And every kitchen, ſcullery, buttery, pantry, larder, waſhhouſe, laundry, bakehouſe, brewhouſe, and lodging room, belonging to or occupied with any dwelling houſe, whether joined to it or not, ſhall be deemed part thereof, and the windows therein charged accordingly. 21 *G.* 2. *c.* 10. *ſ.* 1. Unto what windows the ſame ſhall extend.

Alſo ſky lights, and windows or lights in ſtaircaſes, garrets, cellars, paſſages, and in all other parts of dwelling houſes, to what uſe ſoever applied, ſhall be charged. *ſ.* 2.

5. And where ſeveral windows are fixed in one frame, if the partition or diviſion between them is of the breadth of 12 inches, the windows on each ſide of the partition ſhall be deemed a diſtinct window. 20 *G.* 2. *c.* 3. *ſ.* 38. Several windows in one frame.

6. And all windows in frames which ſhall give light into more rooms than one, ſhall be charged as ſo many ſeparate windows, as there are rooms inlighted thereby. 20 *G.* 2. *c.* 3. *ſ.* 38. Window inlightning two rooms.

7. And no windows or lights ſhall be deemed to be ſtopped up, unleſs it be done effectually with ſtone or brick, or plaiſter upon lath, or upon any other material commonly uſed to plaiſter upon, or with the ſame kind of materials whereof the outſide of the houſe doth chiefly conſiſt. 21 *G.* 2. *c.* 10. *ſ.* 11. Windows ſtopped up.

But this not to extend to windows ſtopped up with any materials, before the year 1746. *ſ.* 12.

And if any occupier ſhall open any windows, after the aſſeſſments are ſettled, and warrants for collecting ſigned, in writing to the ſurveyor, he ſhall forfeit without notice 3. *ſ.* 39. by diſtreſs and ſale, *ſ.* 28. half 20*s.* 20 *G.* 2. *c.* of

of which fine ſhall go to the informer. 21 *G.* 2. *c.* 10. *ſ.* 15.

Two families in one houſe.

8. Where a houſe ſhall be inhabited by two or more perſons or families, it ſhall pay as if it was inhabited by one perſon or family only. 20 *G.* 2. *c.* 3. *ſ.* 31.

Houſe let in different apartments.

9. Where any dwelling houſe is let in different apartments to ſeveral perſons, and the landlord of ſuch houſe pays other taxes and pariſh rates for the ſame; ſuch landlord ſhall be deemed the occupier of ſuch dwelling houſe, and be charged with the duties for the ſame, as on entire houſe. 20 *G.* 2. *c.* 3. *ſ.* 35.

Rates to be charged on the inhabitants.

10. And the rates ſhall be charged only upon the inhabitants or occupiers, and not on the landlord who let or demiſed the ſame. 20 *G.* 2. *c.* 3 *ſ.* 5.

Infants how chargeable.

11. Parents and guardians of infants, on default of payment by ſuch infants, ſhall be liable; and may be proceeded againſt as other perſons making default. *id. ſ.* 15.

Colleges.

12. Each diſtinct chamber in a college or hall in the univerſities, ſhall pay as if it were an entire houſe paying to church and poor. *id. ſ.* 32.

Inns of court.

13. Every edifice in the inns of court or chancery, being ſeverally in the occupation of any perſon, ſhall pay for every window or light; but ſhall not pay the 2*s.* duty on houſes. 20 *G.* 2. *c.* 3. *ſ.* 33. 21 *G.* 2. *c.* 10. *ſ.* 18, 19.

Cottages.

14. Such dwelling houſes only, where the occupier, by reaſon of poverty only, is exempted from the uſual taxes to church and poor, ſhall be exempted from the duties; and that only in ſuch caſes where the dwelling houſes ſo occupied are cottages, not containing above nine windows in the whole. 20 *G.* 2. *c.* 3. *ſ.* 29.

Houſes left to ſervants.

15. But every houſe whereof the keeping only is committed or left to a perſon or ſervant who pays not to church and poor, ſhall pay as if inhabited by the occupier or tenant. *id. ſ.* 33.

Obſtructing the aſſeſſors.

16. And if any perſon ſhall wilfully obſtruct or moleſt any aſſeſſor in the execution of his duty, he ſhall forfeit 5*l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

Aſſeſſors to aſſeſs themſelves.

17. And the aſſeſſors ſhall aſſeſs themſelves and the commiſſioners, as other perſons are aſſeſſed. 21 *G.* 2. *c.* 10. *ſ.* 16.

Day for bringing in the aſſeſſments.

18. And the commiſſioners ſhall then and there prefix a day for the perſons to appear before them, and bring in their aſſeſſments in writing under their hands; ſetting forth therein the names and ſurnames of the ſeveral occupiers or inhabitants of each reſpective dwelling houſe chargeable, the number of windows or lights, and the ſeveral ſums they ought to pay. 20 *G.* 2. *c.* 3. *ſ.* 6.

Which

Which day ſhall be on or before *June* 4. yearly. *ſ.* 7. (B)

III. Third meeting; ſigning the aſſeſſment, with warrant to collect.

1. The aſſeſſors appearing at the day appointed, ſhall deliver in their aſſeſſments, to be verified upon their oaths, and not otherwiſe. 20 *G.* 2. *c.* 3. *ſ.* 6. Aſſeſſment delivered in.

2. And ſhall then return the names of two or more able and ſufficient perſons to be collectors, for whom the pariſh or place ſhall be anſwerable. 20 *G.* 2. *c.* 3. *ſ.* 6. Returning the names of collectors.

3. At which time alſo, three or more of the commiſſioners ſhall ſet their hands to the aſſeſſments, teſtifying their allowance thereof. 20 *G.* 2. *c.* 3. *ſ.* 9. Signing the aſſeſſment.

Note; It is not neceſſary by the words of the act that the ſame ſhall be ſealed.

4. And they ſhall alſo appoint two of the perſons named in the aſſeſſment, or any two others whom they ſhall think able and reſponſible, to be collectors. *id.* (C) Appointing collectors.

5. Alſo on delivery and return of the aſſeſſments, three or more commiſſioners ſhall, at leaſt ten days before the rates ſhall become due, iſſue their warrants or eſtreats under their hands and ſeals, to the collectors, for the ſpeedy collecting and levying the ſame, as they ſhall become due and payable. *id. ſ.* 7. Warrant to collect.

And they ſhall forthwith deliver the aſſeſſment ſo allowed of, to the collectors. *ſ.* 9.

6. Collectors refuſing to take their offices, ſhall forfeit 5*l.* 20 *G.* 2. *c.* 42. *ſ.* 2. by diſtreſs and ſale, as by the 20 *G.* 2. *c.* 3. Collector refuſing to act.

7. Then three or more commiſſioners ſhall alſo give the collectors notice when and where the appeals of any perſons who ſhall think themſelves over rated, may be heard and determined. *id. ſ.* 12. Appointing the time for appeal.

And all appeals which ſhall be made between *Mar.* 25. and *Aug.* 20. yearly, ſhall be heard and determined by the commiſſioners upon ſuch days as ſhall be by them appointed between *Aug.* 20. and *Sep.* 15. And all ſuch other appeals as ſhall be made between *Sep.* 29. and *Jan.* 20. yearly, ſhall be heard and determined upon ſuch other days as ſhall be appointed between *Jan.* 20. and *Feb.* 10. 21 *G.* 2. *c.* 10. *ſ.* 7.

8. And where the commiſſioners ſhall have omitted to execute the powers to them given, within the time, and according to the manner above preſcribed, two or more of them may meet, and execute the ſame at any other times, as there ſhall be occaſion. 20 *G.* 2. *c.* 42. *ſ.* 1. Remedy where the commiſſioners have omitted their duty.

Surveyors to examine and ſurvey.

9. At this third meeting likewiſe comes in the buſineſs of the ſurveyors, who ſhall be appointed by the king, or three commiſſioners of the treaſury; who ſhall appoint them ſuch ſalaries as they ſhall think reaſonable. 20 *G.* 2. *c.* 3. *ſ.* 30, 42, 43.

And they ſhall have power to examine the aſſeſſments, before they are ſigned and allowed by the commiſſioners; and at ſeaſonable times, with a conſtable, to view and examine whether there be any more windows than are aſſeſſed, and to paſs for that purpoſe thro' any houſe, to go into any court, yard, or backſide thereunto belonging, and externally to view the windows which cannot be conveniently ſeen or numbred without going thro' ſuch houſe: and this they may do twice a year. *id. ſ.* 30.

And the conſtables, and other his majeſty's officers, ſhall be aſſiſting; and ſhall alſo obey and execute the warrants of the commiſſioners to them directed. *id. ſ.* 22.

And if any perſon ſhall wilfully obſtruct or moleſt any ſurveyor in the execution of his duty, he ſhall forfeit 5*l.* to be levied as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 14.

IV. Fourth meeting; the appeal.

Notice of the appeal day to be given in the church.

1. Every collector ſhall, within ten days after notice from the commiſſioners of the time and place of appeal, cauſe publick notice to be given in every pariſh church or chapel within his diſtrict, immediately after divine ſervice, on the lord's day (if any ſuch divine ſervice ſhall be performed there within that time) of the time and place ſo appointed by the commiſſioners for hearing and determining appeals: And ſhall alſo, on the ſame day, cauſe the like notices to be fixed in writing on the door of ſuch church or chapel. 20 *G.* 2. *c.* 3. *ſ.* 12.

Surveyor to give in his ſurcharge.

2. And after the rates are ſigned and allowed by the commiſſioners, if the ſurveyor finds on his ſurvey, that any houſes or lights have been omitted, or are under rated, he ſhall certify the ſame in writing under his hand, by way of ſurcharge, on or before *Aug.* 10. and *Jan.* 10. yearly, to any three or more commiſſioners, in order to have ſuch omiſſion or under rate certified in the aſſeſſment. 20 *G.* 2. *c.* 3. *ſ.* 37. 21 *G.* 2. *c.* 10. *ſ.* 6.

And he ſhall alſo leave a written notice at the dwelling houſe of every occupier ſo ſurcharged, that he intends to charge them for ſuch number of windows or lights as are charged in ſuch certificate. 21 *G.* 2. *c.* 10. *ſ.* 6.

Notice of appeal.

3. And every perſon intending to appeal ſhall give at leaſt ten days notice thereof in writing to the ſurveyor, or to one or more of the aſſeſſors. 21 *G.* 2. *c.* 10. *ſ.* 8.

4. And

4. And no aſſeſſment ſhall be altered or diminiſhed, except only on hearing the appeal, upon a general appeal day. 21 *G.* 2. *c.* 10. *ſ.* 5. Aſſeſſment not to be altered but on a general appeal day.

5. And the ſurveyor, aſſeſſors, and appellant may be preſent during the time of hearing and determining the appeal, unleſs they miſbehave. 21 *G.* 2. *c.* 10. *ſ.* 8. Surveyor may be preſent.

6. And in caſe of any controverſy ariſing between the commiſſioners concerning the aſſeſſments, the commiſſioners that ſhall be concerned therein ſhall have no voice, but ſhall withdraw during the debate, until it be determined by the reſt of the commiſſioners. 20 *G.* 2. *c.* 3. *ſ.* 21. Commiſſioner intereſted to withdraw.

7. The ſurveyor appearing to make good his ſurcharge, ſhall make oath that a written notice was left at the dwelling houſes of the ſeveral occupiers ſo ſurcharged, that he intended ſo to ſurcharge them. 21 *G.* 2. *c.* 10. *ſ.* 6. Surveyor to make oath that he gave notice.

8. At the appeal, the commiſſioners ſhall examine the parties complaining, upon oath, concerning their number of windows or lights. 20 *G.* 2. *c.* 3. *ſ.* 12. The parties to be examined on oath.

And they ſhall not make any abatement of the charge or ſurcharge, unleſs it appear upon oath, that ſuch perſon is over rated. 21 *G.* 2. *c.* 10. *ſ.* 8.

9. Appeals determined ſhall be final: Except that if the ſurveyor or appellant ſhall then declare himſelf diſſatisfied with the determination of the commiſſioners, they ſhall, at ſuch perſon's requeſt, ſtate ſpecially and ſign the caſe upon which the queſtion aroſe, together with their determination thereupon, and cauſe the ſame to be delivered to the party, to be by him tranſmitted to one of the judges; who ſhall with all convenient ſpeed return an anſwer, with his opinion ſubſcribed; according to which, the aſſeſſment ſhall be altered or confirmed; provided that the determination of the commiſſioners ſhall ſtand, with reſpect to the payments which ſhall be due precedent to the opinion upon the caſe certified by the judge. 21 *G.* 2. *c.* 10. *ſ.* 9, 10. How far the appeal determined ſhall be final.

V. Collecting.

1. The collectors ſhall make demand of the parties chargeable, or at the places of their laſt abode, within ten days after the duties ſhall become due and payable. 20 *G.* 2. *c.* 3. *ſ.* 7. Collector to make demand.

2. And on payment thereof, they ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the perſon paying the ſame. *id.* And give receipts.

3. And if any perſon ſhall refuſe to pay to the collector on demand, he may diſtrain ſuch perſon by his goods; and ſhall keep the diſtreſs four days at the owner's coſt; and if May diſtrain.

not paid in the ſaid four days, then the diſtreſs ſhall be appraiſed by two inhabitants; and then ſold by the officer; the overplus (if any) over and above the charges of taking and keeping the diſtreſs, to be immediately reſtored to the owner. *id. ſ.* 11.

And where any refuſal, neglect, or reſiſtance ſhall be made, it ſhall be lawful by warrant of three commiſſioners to break open any houſe in the day time, calling in the conſtable to aſſiſt. *id.*

Commitment for want of diſtreſs.

4. And if ſufficient diſtreſs cannot be found, three commiſſioners by their warrant may commit any perſon who ſhall refuſe or neglect to pay for 20 days after demand, to the common gaol, until payment ſhall be made. 20 *G.* 2. *c.* 3. *ſ.* 11.

Levying arrears.

5. Arrears may be levied by the commiſſioners in the ſame manner as the rates and duties. 21 *G.* 2. *c.* 10. *ſ.* 17.

Occupier removing.

6. Where the occupier removes without paying the rates, the commiſſioners are to tranſmit a certificate thereof, to the commiſſioners where the perſon reſides; who ſhall cauſe the ſame to be levied and paid to the collectors of the place from whence the perſon did remove. 20 *G.* 2. *c.* 3. *ſ.* 41.

VI. Collector paying to the receiver.

Collector to pay to the receiver.

1. The collectors ſhall pay in the money received, within ten days after receipt thereof, to the receiver general or his deputy, at ſuch place as the commiſſioners ſhall appoint. 20 *G.* 2. *c.* 3. *ſ.* 7.

Provided that the collectors ſhall not be obliged to travel above ten miles from their habitations, to pay the money collected. *ſ.* 24.

Receiver to give acquittances.

2. Which receiver general ſhall give acquittances *gratis*; which ſhall be a full diſcharge to the collectors. 20 *G.* 2. *c.* 3. *ſ.* 21.

Deputy receiver.

3. And the ſaid receiver general ſhall give notice of his appointment of a deputy (which appointment ſhall be under hand and ſeal) unto three or more commiſſioners, within 20 days after their firſt meeting, and within 20 days after the death or removal of any deputy. 20 *G.* 2. *c.* 3. *ſ.* 23.

Collector to have 3 *d.* a pound.

4. Every collector ſhall have 3 *d.* in the pound, for what money he ſhall pay to the receiver general. *id. ſ.* 11.

Collector failing.

5. And if the collector ſhall neglect or refuſe to pay the money by him received, at the time appointed, three or more commiſſioners may impriſon his perſon, and ſeize and

ſecure his eſtate as well freehold as copyhold, and all other eſtate both real and perſonal to him belonging, or which ſhall come to his heirs, executors, or adminiſtrators: Which commiſſioners may appoint a time for a general meeting of the commiſſioners, giving publick notice thereof ten days before; and the commiſſioners at ſuch general meeting may ſell ſuch eſtates, or any part of them, for payment. 20 *G.* 2. *c.* 3. *ſ.* 16.

And if there be any arrear, by reaſon of the failure of a collector for whom the pariſh or place is anſwerable, three commiſſioners may cauſe it to be re-aſſeſſed in ſuch pariſh or place. *id. ſ.* 34.

6. And the collectors ſhall deliver a ſchedule of arrears to the receiver general, to be by him returned into the exchequer, that proceſs againſt the defaulters may be iſſued from thence. 20 *G.* 2. *c.* 3. *ſ.* 21. Returning arrears into the exchequer.

The receiver general returning any perſons in arrear who have paid, ſhall forfeit double damages to the party, and double the ſum to the king. *ſ.* 25.

And no receiver ſhall return any perſon in arrear in his accounts, unleſs ſuch account be paſſed in the exchequer, within two years after the end of the year for which ſuch rate ſhall be payable, but the ſame ſhall be a debt on him and his ſecurities. *ſ.* 26.

VII. Receiver paying into the exchequer.

1. The receiver general ſhall pay the ſum received into the exchequer, by four quarterly payments (*viz. June* 24. *Sep.* 29. *Dec.* 25. and *Mar.* 25,) or in 40 days after the reſpective quarterly pay days; on pain of 500 *l.* to him who ſhall ſue. 20 *G.* 2. *c.* 3. *ſ.* 10. Times of paying into the exchequer.

2. And he ſhall have an allowance of 2 *d.* in the pound, for the money he ſhall pay into the exchequer. *ſ.* 11. Receiver's allowance.

VIII. Duplicates to be tranſmitted into the exchequer.

The commiſſioners ſhall cauſe true duplicates of the aſſeſſments to be made out, within 3 months at fartheſt after *Mar.* 25. yearly; the appeals being firſt heard and determined. Such duplicates to be made for the ſame hundreds, wards, pariſhes, or places, for which diſtinct duplicates are and have been uſually made out for the land tax; and the names and ſirnames of the aſſeſſors and collectors reſpectively ſhall be inſerted therein. 20 *G.* 2. *c.* 3. *ſ.* 10. Tranſmitting the duplicates.

One of which duplicates ſhall be delivered to the receiver general, and another tranſmitted into the office of the king's

remembrancer in the exchequer; for which the proper officers ſhall give acquittances *gratis*. *id.*

And the commiſſioners clerks ſhall not have the 1*d.* $\frac{1}{2}$ in the pound, until this be done. *ſ.* 11.

IX. General penalty on officers not doing their duty.

Penalty on the ſurveyor.

1. If any ſurveyor ſhall knowingly, thro' favour or malice, under rate or over rate, or omit to charge any perſon liable, or ſhall be guilty of any corrupt or illegal practice in the execution of his office; he ſhall forfeit 100*l.* and his office. 20 *G.* 2. *c.* 3. *ſ.* 10.

On the aſſeſſor.

2. Aſſeſſor guilty of concealment or favour in aſſeſſing, ſhall forfeit not exceeding 5*l.* nor under 40*s.* *id. ſ.* 6.

On the collector.

3. Collector gathering by a rate not ſigned and allowed by the commiſſioners; or receiving rates from perſons not charged therewith; or collecting from any perſon more than he is charged, and not paying the whole ſum collected; or fraudulently altering any rate after being ſigned by the commiſſioners, ſhall forfeit 20*l.* *id. ſ.* 36. by diſtreſs. *ſ.* 28.

On others.

4. And generally; If any aſſeſſor, collector, or other perſon appointed by the commiſſioners, ſhall wilfully neglect or refuſe to perform his duty, three commiſſioners may fine him not exceeding 20*l.* nor under 5*l.* to be levied by diſtreſs, and charged amongſt the rates to the receiver general. *id. ſ.* 21.

General method of levying the penalties.

5. And the penalties and forfeitures, for which no other way of levying is preſcribed, ſhall be levied by warrant of three commiſſioners by diſtreſs, rendring the overplus, after deducting reaſonable charges for diſtraining. *id. ſ.* 28.

X. Indemnity of officers in doing their duty.

Treble coſts.

Perſons ſued for any thing done in the execution hereof, may plead the general iſſue, and have treble coſts. 20 *G.* 2. *c.* 3. *ſ.* 66. 21 *G.* 2. *c.* 10. *ſ.* 20.

A. Precept to the high conſtables to return aſſeſſors.

Weſtmorland. { To *Henry Holme*, gentleman, high conſtable of the Weſt Ward within the ſaid county.

WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet, and ſeals affixed, do hereby require you forthwith upon the receipt*

ceipt hereof, to iſſue out your warrants to all the petty conſtables within your ſaid Ward, according to the form hereupon indorſed. Given under our hands and ſeals the ——— day of ——— in the ——— year ———

The form of the ſaid warrant to be indorſed.

Weſtmorland, Weſt Ward. } To the conſtable of ———

BY virtue of a precept from the commiſſioners of the duties upon houſes and windows for the ſaid county to me directed, you are hereby required forthwith to give notice to the laſt collectors of the ſaid duties within your conſtablewick, that they and every of them do perſonally appear before the ſaid commiſſioners at ——— on ——— the ——— day of ——— at the hour of ——— in the forenoon of the ſame day, in order to be appointed aſſeſſors of the ſaid duties, for this preſent year, and at the ſame time to receive their charge, how and in what manner to make their aſſeſſments, and otherwiſe how to proceed in the execution of their ſaid office. And be you then there to certify what you ſhall have done in the execution hereof. Given under my hand the ——— day of ——— in the year of our lord ———

Henry Holme, *high conſtable.*

B. Appointment of aſſeſſors, with their charge.

Weſtmorland. *WE the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint ——— to be aſſeſſors of the ſaid duties within the townſhip of ——— in the county aforeſaid. And we do hereby require you the ſaid aſſeſſors, to make your aſſeſſment for the ſame, according to the proportions of the laſt aſſeſſment for the ſaid duties within your ſaid townſhip; but with ſuch alterations therein as ſhall be neceſſary by reaſon of any new houſes erected, or the number of windows in any houſe increaſed, or the removal and change of the inhabitants, or otherwiſe. And your ſaid aſſeſſment you are to make out in writing, ſetting forth therein the names of the ſeveral occupiers or inhabitants, the number of windows or lights, and the ſum which they ought to pay; and ſign the ſame; and deliver the ſame to us upon oath at ——— in the county aforeſaid, on ——— the ——— day of ——— in the forenoon of the ſame day. At which time and place you are alſo hereby required to return unto us the names of two or more able and ſufficient inhabitants within your ſaid townſhip, to be collectors*

of the ſaid aſſeſſment; and in the mean time to give notice unto them, that they do alſo then and there appear, to receive their appointment, nomination, and charge. Given under our hands and ſeals the ——— day of ——— in the year of our lord ———

C. Appointment and charge of the collectors, with warrant to collect.

Weſtmorland. WE *the commiſſioners of the duties upon houſes and windows for the ſaid county, whoſe names are hereunto ſet and ſeals affixed, do hereby nominate and appoint ——— to be collectors of the ſaid duties for the townſhip of ——— in the ſaid county, for this preſent year, and do hereby impower them to demand, collect, and receive the ſame. And you the ſaid collectors are hereby required, within ten days after your receipt hereof, to cauſe publick notice to be given in the church or chapel immediately after divine ſervice on the lord's day, and to cauſe the like notice in writing to be affixed on the door of ſuch church or chapel, that all appeals againſt the aſſeſſment for the ſaid duties will be heard and determined by the ſaid commiſſioners at —— on the ——— day of ———. And if any perſon ſhall neglect or refuſe to pay the ſame unto you upon demand, you are hereby required forthwith to give notice unto us thereof, that ſuch further proceedings may be had therein, as to law doth appertain. And the ſame when collected, you are hereby required to pay unto the receiver general or his deputy, at the times and places hereafter following; that is to ſay, ——— deducting out of the laſt payment thereof* 3 d. *for every pound by you collected, for your trouble in collecting and giving receipts. Given under our hands and ſeals the ——— day of ——— in the year of our lord ———*

Wine.

In veſſels of what ſize to be imported.

1. NO wine (except of the growth of *Tuſcany*, *Turkey*, or the *Levant*) ſhall be imported in flaſks, bottles, or veſſels, leſs than 25 gallons; on pain of forfeiting the ſame, or the value; half to the king, and half to him that ſhall ſeize or ſue by the laws of exciſe, or in the courts at *Weſtminſter*. 1 *G.* 2. *ſt.* 2. *c.* 17. *ſ.* 7, 8.

To be imported in Engliſh ſhipping.

2. No wine ſhall be brought forth of *France*, but in *Engliſh* ſhipping, on pain of forfeiture. 5 *El. c.* 5. *ſ.* 11.

And the juſtices in ſeſſions may determine offences againſt this act, by indictment or information. *ſ.* 30.

3. By

3. By the 9 *An.* *c.* 23. a wine licence is directed to be upon a 4*s.* ſtamp. And by the 30 *G.* 2. *c.* 19. a further duty is laid thereon, of 5*l.* for perſons not having either ale or brandy licence; of 4*l.* for perſons having an ale licence, and no brandy licence; and of 40*s.* for perſons having both ale and brandy licence. Licence for retailing.

And by the ſame ſtatute of the 30 *G.* 2. *c.* 19. after *July* 5, 1757, no perſon unleſs he be authorized and enabled in the manner herein after preſcribed, ſhall ſell or utter by retail, that is, by the pint, quart, pottle, or gallon, or by any other greater or leſs retail meaſure, or in bottles, in any leſs quantity than ſhall be equal to the meaſure of the caſk or veſſel in which the ſame ſhall have been or may lawfully be imported, any kind of wine or liquor called or reputed wine; on pain of 100*l.* half to the king, and half to the informer, to be recovered as the penalties for offences againſt the ſtamp acts. *ſ.* 2.

And two or more commiſſioners of the duties on ſtamped paper or parchment, and no other perſons, ſhall grant licences under their hands and ſeals, to ſuch perſons as they ſhall think fit, to ſell wine by retail as aforeſaid, for one year from the date of ſuch licences. *ſ.* 3.

Provided, that if the former commiſſioners for wine licences ſhall have granted a licence to any perſon to ſell wine by retail for one year, or for any term not then expired, the perſon ſo licenſed ſhall be enabled to ſell wine by retail for the ſpace of one year from the date of ſuch licence, or until the expiration of the term for which the licence ſhall be granted. *ſ.* 4.

And every perſon who ſhall have ſuch licence ſhall, if he intends to continue, take out a freſh licence ten days at leaſt before the expiration of the former, and in the ſame manner renew the ſame from year to year, paying down the reſpective ſum due for ſuch licences. *ſ.* 5.

And on application for any perſon not reſiding within the bills of mortality, the commiſſioners ſhall cauſe the ſame to be delivered on payment of the duty. *ſ.* 6.

Provided, that nothing herein ſhall be prejudicial to the privileges of the two univerſities. *ſ.* 9.

Nor to the company of vintners in *London*, or to any other city or town corporate; but they may enjoy ſuch privileges as they have heretofore lawfully enjoyed. Provided, that no perſon who ſhall be admitted to the freedom of the ſaid company of vintners by redemption only, ſhall be exempted from taking ſuch licence; but only the freemen of the ſaid company who have been already admitted to their freedom, or who ſhall after the ſaid fifth day of *July* 1757 be admitted to their freedom in right of patri-

mony or apprenticeſhip, ſhall be intitled to ſuch exemption. *ſ.* 11.

Nor to extend to the mayor and burgeſſes of *St. Albans* for appointing and licenſing by virtue of their charter three wine taverns for and towards the maintenance of the free ſchool there. *ſ.* 12.

Setting the prices of wines.

4. The lord chancellor, lord treaſurer, lord preſident, lord privy ſeal, and the two chief juſtices, or any three of them, ſhall yearly between *Nov.* 20. and *Dec.* 31. ſet the prices of wines ſold in groſs; ſo that proclamation be made thereof in term time in the court of chancery, or in the town where they ſhall be ſold; and if any perſon ſhall offend againſt the ſaid aſſeſſment, he ſhall forfeit for every veſſel 40*s.* half to the king, and half to the mayor if in a town corporate; and if not, to him that ſhall ſue. 28 *H.* 8. *c.* 14. *ſ.* 2, 3. 37 *H.* 8. *c.* 23. *ſ.* 2. 12 *C.* 2. *c.* 25. *ſ.* 13.

And the juſtices of the peace, and mayors, may hear and determine the defaults of ſuch offenders, and puniſh them by impriſonment, or otherwiſe, by their diſcretions. 28 *H.* 8. *c.* 14. *ſ.* 4.

And by the 37 *H.* 8. *c.* 23. If any perſon ſhall refuſe to ſell at the prices limited, the mayor and recorder and two ancient aldermen in *London*, being no vintners; and the mayor, aldermen, and other head officers elſewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and ſell the ſame to the owner's uſe. *ſ.* 3.

Adulterating wines.

5. No perſon ſelling wine ſhall mix wines together, nor with any other thing; on pain that the ſeller in groſs ſhall forfeit 100*l.* and the retailer 50*l.* half to the king, and half to him that ſhall ſue in any court of record. 12 *C.* 2. *c.* 25. *ſ.* 11.

Wine meaſure.

6. By the 5 *An.* *c.* 27. 231 cubical inches ſhall be a wine gallon, 63 gallons a hogſhead, 126 gallons a butt or pipe, and 252 gallons a ton. *ſ.* 17.

Wire. See Exciſe.

Witchcraft.

Witchcraft abolished.

1. BY the 9 *G.* 2. *c.* 5. No proſecution, ſuit, or proceeding, ſhall be commenced or carried on againſt any perſon for witchcraft, ſorcery, inchantment, or conjuration, or for charging another with any ſuch offence, in any court whatſoever. *ſ.* 3.

2. But if any perſon ſhall pretend to exerciſe or uſe any kind of witchcraft, ſorcery, inchantment, or conjuration; or undertake to tell fortunes; or pretend from his ſkill or knowledge in any occult or crafty ſcience, to diſcover where, or in what manner, any goods or chattels, ſuppoſed to have been ſtolen or loſt, may be found; every perſon ſo offending, being convicted on indictment or information, ſhall ſuffer impriſonment for a year without bail or mainprize, and once in every quarter of the ſaid year, in ſome market town of the proper county, upon the market day there, ſtand openly on the pillory for one hour, and alſo ſhall (if the court by which ſuch judgment ſhall be given ſhall think fit) be obliged to give ſureties for his good behaviour, in ſuch ſum, and for ſuch time, as the ſaid court ſhall judge proper, according to the circumſtances of the offence, and in ſuch caſe ſhall be further impriſoned until ſuch ſureties be given. *ſ.* 4. Pretending to witchcraft.

Witneſſes. See Evidence.

Women.

Concerning women conſidered as *wives*, or *femes covert*; ſee title Wife.

Concerning women having two huſbands, or men two wives; ſee title Polygamy.

Concerning the raviſhment of women, ſee title Rape.

For clandeſtine marriages, and counterfeiting marriage licences and regiſters; ſee title Marriage.

1. IF any perſon ſhall unlawfully and carnally know and abuſe any woman child under the age of ten years, he ſhall be guilty of felony without benefit of clergy. 18 *El. c.* 7. Carnally knowing a female child under ten.

2. None ſhall take by force any maiden within age (that is, the age of 12 years, being the age of conſent to marriage, 2 *Inſt.* 182.) by her own conſent nor without; nor any wife or maiden of full age, nor any other woman againſt her will; on pain of impriſonment for two years, and after, fine at the king's will. 3 *Ed.* 1. *c.* 13. Taking a woman by force.

3. If any perſon take by force, or otherwiſe, any woman ſole, having any ſubſtance of lands, tenements, or moveable goods, and inforce her before ſhe be ſet at liberty, to bind her ſelf to him by ſtatute or obligation; ſuch bond ſhall be void. 31 *H.* 6. *c.* 9. Forcing her to become bound.

4. Whereas

The offence commonly called ſtealing an heireſs.

4. Whereas women, as well maidens, as widows, and wives, having ſubſtances, ſome in goods moveable, and ſome in lands and tenements, and ſome being heirs apparent unto their anceſtors, for the lucre of ſuch ſubſtances, are oftentimes taken by miſdoers, contrary to their will, and after married to ſuch miſdoers, or to other by their aſſent, or defiled,—it is enacted, that what perſon that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow, or wife, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony; and that ſuch miſdoers, takers, and procurators to the ſame, and receitors, knowing the ſaid offence, ſhall be adjudged as principal felons. 3 *H.* 7. *c.* 2. And by the 39 *El. c.* 9. Benefit of clergy is taken away from the principals, procurers, and acceſſaries before.

Upon the face of which ſaid ſtatute of the 3 *H.* 7. theſe things are required to make the offence felony; 1. That the maid, wife, or widow, have lands, or tenements, or moveable goods, or be an heir apparent. 2. That ſhe be taken away againſt her will. 3. That the taking was for lucre. And 4. That ſhe be married to the miſdoer, or to ſome other by his conſent; or be defiled (that is, carnally known.) For if theſe concur not, and be ſo laid in the indictment, the miſdoer is not a felon within this ſtatute, but otherwiſe to be puniſhed. 3 *Inſt.* 61. 1 *Haw.* 110.

The ſaid act makes not only the takers, but the procurers, and abettors of the felony, and receivers of the woman wittingly, knowing the ſame, to be all principal felons; the like whereof lord *Coke* ſays he hath not found in any other ſtatute that he remembers. But by a conſtruction of the common law, they that receive the miſdoers, and not the woman, are acceſſaries only. 3 *Inſt.* 61, 62.

But thoſe who are only privy to the marriage, but no way parties to the forcible taking away, or conſenting thereto, are not within the ſtatute. 1 *Haw.* 110.

It is no manner of excuſe, that the woman at firſt was taken away with her own conſent; becauſe if ſhe afterwards refuſe to continue with the offender, and be forced againſt her will, ſhe may from that time as properly be ſaid to be taken againſt her will, as if ſhe had never given any conſent at all; for till the force was put upon her, ſhe was in her own power. 1 *Haw.* 110.

Alſo, it is not material, whether a woman ſo taken contrary to her will, be at laſt married or defiled with her own conſent, or not; if ſhe were under the force at the time. 1 *Haw.* 110.

In

In *Fulwood's* caſe, *M.* 13 *C.* it was reſolved, that the woman taken away and married, may be ſworn and give evidence againſt the offender, who ſo took and married her, tho' ſhe be his wife *de facto.* 1 *H. H.* 661.

5. If any perſon above the age of 14 years, ſhall unlawfully take or convey, or cauſe to be taken or conveyed, any maid or woman child unmarried, being within the age of 16 years, out of the poſſeſſion and againſt the will of her father, or mother, or guardian; he ſhall ſuffer two years impriſonment, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. 4 & 5 *P. & M. c.* 8. *ſ.* 3. Taking a woman under 16.

H. 15 *G.* 2. *K.* againſt *Cornforth* and others. The court granted an information againſt the defendants, for taking away a *natural* daughter under 16, under the care of her putative father; being of opinion it was within this ſtatute. *Str.* 1162.

And if any perſon ſhall ſo take away, or cauſe to be taken away, *and deflour*, any ſuch maid or woman child; or ſhall againſt the will or knowledge of the father, or if he is dead, of the mother having tuition of ſuch child, *contract matrimony* with her by letters, meſſages, or otherwiſe; he ſhall be impriſoned for five years, or pay ſuch fine as ſhall be aſſeſſed by the court, half to the king, and half to the parties grieved. *ſ.* 3.

And if any woman child or maiden, being above the age of 12 years, and under 16, ſhall conſent or agree to ſuch perſon ſo making ſuch contract of matrimony; the next of kin to her ſhall have, hold, and enjoy her lands during the life of the perſon ſo contracting. *ſ.* 6.

But by the 26 *G.* 2. *c.* 33. No ſuit ſhall be had in any eccleſiaſtical court, in order to compel a celebration of marriage *in facie eccleſiæ*, by reaſon of any contract of matrimony whatſoever, whether *per verba de præſenti*, or *per verba de futuro.* And the marriage of any perſon under the age of 21, without the conſent of parents or guardians, ſhall be null and void.

6. In an appeal by a woman, the appellee cannot wage battel, but muſt put himſelf upon his country. 2 *Haw.* 427. Appeal by a woman.

7. Peereſſes ſhall be tried as peers, for treaſon or felony. 20 *H.* 6. *c.* 9. Peereſſes how to be tried.

8. Women upon ſtanding mute, are liable to *pain fort & dure*, as men are. 2 *Haw.* 331. Woman ſtanding mute.

9. A woman being convicted for an offence, for which a man may have his clergy, ſhall ſuffer the ſame puniſhment as a man ſhould ſuffer, that has the benefit of his clergy allowed; that is, ſhall be burnt in the hand, and Benefit of clergy.

further

further kept in priſon as the court ſhall think fit, not exceeding one year. 3 *W.* *c.* 9.

But ſhe ſhall have the benefit of the ſaid ſtatute but once. 4 & 5 *W.* *c.* 24. *ſ.* 13.

Judgment in treaſon and felony.

10. The judgment againſt a woman, in caſe of high treaſon is, not the ſame as againſt a man traytor, to be hanged, cut down alive, have the bowels taken out, and the body quartered; but to be drawn to the place of execution, and there burned:

And this alſo is the judgment againſt a woman, in caſe of petit treaſon; whereas the judgment againſt a man for petit treaſon is, that he ſhall be hanged:

But in caſe of felony, the judgment is the ſame againſt both man and woman, to be hanged by the neck till dead. 2 *Haw.* 444.

Plea of pregnancy.

11. It is clear, that if a woman quick with child be condemned either for treaſon or felony, ſhe may alledge her being with child in order to get the execution reſpited, and thereupon the ſheriff ſhall be commanded to take her into a private room, and to impanel a jury of matrons to try and examine, whether ſhe be quick with child or not; and if they find her quick with child, the execution ſhall be reſpited till her delivery. But it is agreed, that a woman cannot demand ſuch reſpite of execution, by reaſon of her being quick with child, more than once. 2 *Haw.* 464.

Attending the torn and leet.

12. Women are not obliged to appear at the torn or leet. 2 *Haw.* 57.

Serving the office of conſtable.

13. Mr. *Hawkins* ſeems to be of opinion, that a cuſtom of the inhabitants ſerving the office of conſtable by turns, is good; and that when it comes to the turn of a woman inhabitant, ſhe muſt procure one to ſerve for her. 2 *Haw.* 63.

Wood.

Pulling down hedges of ground improved.

1. IT is proper to inſert here in the firſt place, a clauſe in the ſtatute of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. both upon its own account, and its being referred to afterwards by ſubſequent ſtatutes; *viz.* *Where ſometime it chanceth, that one having a right to approve, doth then levy a dyke or an hedge, and ſome by night, or at another ſeaſon, when they ſuppoſe not to be eſpied, do overthrow the hedge or dyke, and it cannot be known by verdict of the aſſize or jury, who did overthrow the hedge or dyke, and men of the towns near will not indict ſuch as be guilty of the fact; the towns near ad-*

joining ſhall be diſtrained to levy the hedge or dyke at their own coſt, and to yield damages.

And by the 3 & 4 Ed. 6. c. 3. *Such perſon as ſhall bring an aſſize hereupon, and have judgment to recover, ſhall have his damages trebled by the judgment of the court.* ſ. 4.

One having a right to approve] Foraſmuch as the lord ought to divide the parts of the common improved, by the hedge, ditch, or other defence; now this clauſe provideth, that if perſons unknown, either in the night or otherwiſe, ſo ſecretly proſtrate the ditches, hedges, or other fences, as the lord cannot know againſt whom to bring his aſſize or other action; and the men of the towns next adjoining thereunto round about do not indict the miſdoers of the fact, thoſe next towns round about ſhall be diſtrained to make the hedge or ditch at their own coſt, and yield damages to the lord. 2 *Inſt.* 476.

Indict] That is, indict him at the king's ſuit, either of a riot, force, or treſpaſs: But here it is demanded, what *time* have the next towns round about adjoining to indict the miſdoers, ſeeing here is no time appointed; and the anſwer is, that ſeeing no time is appointed, the law doth appoint (as in many caſes it doth) a year and a day for the indicting of the miſdoers; and by the indictment the lord ſhall know againſt whom to bring his action. 2 *Inſt.* 476.

The towns near adjoining ſhall be diſtrained to levy the hedge or dyke, at their own coſt, and to yield damages] If the bordering towns do not within a year and a day indict the miſdoers, then ſhall the lord or other party grieved bring his action upon this branch, againſt the towns bordering round about the town wherein the fact was done, and judgment ſhall be given, that they ſhall at their proper coſts make the ditch or hedge, and yield damages; and after judgment given, they ſhall be diſtrained to make the hedge or ditch. 2 *Inſt.* 477.

Cutting down woods wherein there is common of paſture.

2. By the 35 *H.* 8. *c.* 17. intitled, *The bill for the preſervation of woods*, No perſon who ſhall have any woods or underwoods wherein others have common of paſture, ſhall cut down the ſame, until the fourth part thereof ſhall be ſet out and fenced by the lord with the aſſent of the major part of the tenants; and if they cannot agree, then two juſtices being thereunto appointed by the more number of the juſtices of the ſhire in their quarter ſeſſions, ſhall ſet out the ſame. *ſ.* 7.

Burning coal wood; barking fruit trees.

3. If any perſon ſhall maliciouſly, willingly, and unlawfully burn, or cauſe to be burned, any heap of wood prepared, cut and feiled, for making of coals, billets, or

talwood; or bark any apple trees, pear trees, or other fruit trees; he ſhall forfeit to the party grieved treble damages by action of treſpaſs at the common law, and alſo 10 *l.* to the king. 37 *H.* 8. *c.* 6. *ſ.* 4.

Robbing orchards; breaking hedges; pulling up fruit trees; ſpoiling wood growing.

4. Every perſon who ſhall rob any orchards or gardens; or break or cut any hedge, pales, rails, or fence; or dig, or pull up, or take up any fruit tree or trees in any orchard, garden, or elſewhere, to the intent to take and carry the ſame away; or ſhall cut or ſpoil any woods or underwoods, poles, or trees ſtanding (the ſame not being felony by the laws of this realm); every ſuch perſon, his procurers and receivers, knowing the ſame, being thereof convicted by confeſſion, or oath of one witneſs, before one juſtice (or mayor), ſhall give to the party ſuch recompence and ſatisfaction for damages, and within ſuch time, as the ſaid juſtice ſhall appoint; and the ſame to be only for the firſt fault: And if ſuch offender ſhall be thought by the juſtice not able, or do not make ſuch recompence, then he ſhall commit him to the conſtable where the offence ſhall be committed, or the party apprehended, to be whipped. And for every ſuch offence for which the offender ſhall be eftſoons committed in form afore limited, the perſon ſo offending to receive the ſaid puniſhment of whipping. 43 *El. c.* 7. *ſ.* 1.

And if the conſtable ſhall not by himſelf, or ſome other execute upon the offender the ſaid puniſhment, the juſtice may commit him to the common gaol till he comply. *ſ.* 2.

Note, that *robbing of orchards* doth not ſeem to be comprehended in any other ſtatute, ſo that the puniſhment thereof is reſtrained to this ſtatute: But the other offences abovementioned are further puniſhable by other ſtatutes hereafter following.

The ſame not being felony by the laws of this realm] The diſtinction in which caſe ſeemeth to be this; If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only a treſpaſs, for a man cannot ſteal part of the freehold; but if they be ſevered from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a treſpaſs only, but felony.

Hedge breaking, and other wood ſtolen.

5. By the 15 *C.* 2. *r.* 2. The conſtable may apprehend, or cauſe to be apprehended, every perſon he ſhall ſuſpect having or carrying any burden of any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedgewood, broom

broom or furze; ——And by warrant of one juſtice (A) directed to any officer, ſuch officer ſhall have power to enter into and ſearch the houſes, outhouſes, yards, gardens, or other places belonging to the houſes of every perſon they ſhall ſuſpect to have any kind of wood, underwood, poles, or young trees, or bark, or baſt of any trees, or any gates, ſtiles, poſts, pales, rails, or hedge wood, broom or furze; and where they ſhall find any ſuch, to apprehend the perſons ſuſpected for cutting and taking the ſame; And as well thoſe apprehended carrying, as thoſe in whoſe houſes or other places the ſame ſhall be found, to carry before one juſtice. And if ſuch perſon do not then and there give a good account how he came by the ſame, ſuch as ſhall ſatisfy the ſaid juſtice; or elſe ſhall not in ſome convenient time to be ſet by the ſaid juſtice, produce the party of whom he bought the ſame, or ſome credible witneſs to depoſe upon oath ſuch ſale thereof, he ſhall be convicted of cutting and ſpoiling the ſame, and puniſhed as by the ſaid act of the 43 *El.* and further by this act:

That is to ſay, he ſhall for the firſt offence give the owner ſuch recompence or ſatisfaction (B) for damages, and within ſuch time, as the juſtice ſhall appoint; and over and above pay down preſently to the overſeers for the uſe of the poor, ſuch ſum not exceeding 10 *s.* as the juſtice ſhall think meet; and if he do not make ſuch recompence, and alſo pay the ſaid ſum to the poor, the ſaid juſtice ſhall commit him (C) to the houſe of correction not exceeding one month, or to be whipped (D) by the conſtable. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be ſent to the houſe of correction for one month, and be there kept to hard labour. And if he ſhall again commit the ſaid offence, and be thereof convicted as before, he ſhall be deemed an incorrigible rogue.

But no perſon ſhall be puniſhed by this act, unleſs he be queſtioned in ſix weeks after the offence committed.

6. And by the ſaid act of the 15 *C.* 2. *c.* 2. Whoſoever ſhall buy any burdens of wood, or any poles or ſticks of wood, or any other the premiſſes, which may be juſtly ſuſpected to have been ſtolen or unlawfully come by; one juſtice (on complaint in ſix weeks as aforeſaid after the offence committed) may examine the matter on oath; and if he ſhall find that the ſame was bought of a perſon who might juſtly be ſuſpected to have ſtolen or unlawfully come by the ſame, and that the ſame was ſtolen or unlawfully come by, he may award the party who bought the ſame to pay treble value (E) to him from whom it was unlawfully taken; and in default of preſent payment, may iſſue his

Buying of ſtolen wood.

his warrant to levy the ſame by diſtreſs (F), and in default of diſtreſs, to commit the party to gaol at his own charge, there to remain one month without bail.

Deſtroying wood growing, or the incloſures thereof.

7. If any perſon ſhall either by day or night, cut, take deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any wood ſprings, trees, poles, wood, tops of trees, under woods or coppice woods, thorns or quickſets, without the conſent of the owner, or of the perſon chiefly intruſted with the care and cuſtody thereof; or ſhall break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, railing, walls, fences, dikes, ditches, banks, or other incloſure thereof; the owner may have ſuch ſatisfaction and recompence from the inhabitants of the pariſhes, towns, hamlets, villages, or places, joining on ſuch wood ſprings or wood grounds, and recover ſuch damages againſt ſuch place or places, and in the ſame manner and form as by the (above recited) act of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. Unleſs the offender, by ſuch pariſhes or places, be convicted in ſix months. 6 *G. c.* 16. *ſ.* 1.——This is to be underſtood, if the offender is not known.

But if the offender is known, then it is enacted as follows; *viz.* If any perſon ſhall in a riotous, open, tumultuous, or in a ſecret or clandeſtine manner, forcibly or wrongfully and maliciouſly, and without conſent of the owner, or perſon chiefly intruſted with the care thereof, cut down, deſtroy, break, bark, throw down, burn, take, deface, ſpoil, or carry away, any wood, or ſprings of wood, underwood, or coppice wood; or break open, throw down, level, or deſtroy any hedges, gates, poſts, ſtiles, rails, fences, ditches, banks, or incloſures of ſuch woods, woody grounds, coppices, plantations, timber trees, fruit trees, or other trees, thorns, or quickſets; Two juſtices, or the juſtices in ſeſſions, on complaint made by any inhabitant of ſuch pariſh or place, or by the owner of the wood, or by any other, may cauſe the offender to be apprehended, and hear and determine the offence; and on conviction, ſhall commit (G) the offender to the houſe of correction to hard labour for three months, and where there is no houſe of correction, then to the priſon for four months, and ſhall alſo order the offender to be publickly whipped by the maſter of ſuch houſe of correction once a month, during ſuch three months, if it is in a borough; or in the market town where ſuch houſe of correction ſtands, or in the next market town next adjacent to ſuch houſe of correction, on the market day, between the hours of eleven and two. And where there is no houſe of correction, the ſaid juſtices ſhall order him to be whipt by the common hangman once a month,

a month, during ſuch four months, on the market day of ſuch borough, or on the market day of ſome town, between the hours of eleven and two. 1 *G. ſt.* 2. *c.* 48. *ſ.* 2. 6 *G. c.* 16. *ſ.* 2. And before he ſhall be diſcharged, he ſhall find ſufficient ſureties for his good behaviour for two years. 1 *G. ſt.* 2. *c.* 48. *ſ.* 3.

And by the 29 *G.* 2. *c.* 36. *ſ.* 8. If any perſon ſhall unlawfully cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any tree growing in any waſte, wood, or paſture, in which any perſon hath right of common; he ſhall be in like manner convicted, and incur the like penalty, as by the 6 *G. c.* 16.

Deſtroying plantations, or throwing down incloſures in the night.

8. By the 22 & 23 *C.* 2. *c.* 7. If any perſon ſhall in the night time, maliciouſly, unlawfully, and willingly deſtroy any plantations of trees, or throw down any incloſures; he ſhall forfeit to the party grieved, treble damages. *ſ.* 5.

And three juſtices (1 *Q.*) may enquire thereof, in ſix months, as well by a jury, as by examination of witneſſes on oath, or by any lawful ways, which to them ſhall ſeem meet. *ſ.* 6, 7.

Setting fire to wood.

9. If any perſon ſhall maliciouſly ſet on fire, or burn, or cauſe to be burnt, any wood, underwood, or coppice, or any part thereof; he ſhall be guilty of felony. 1 *G. ſt.* 2. *c.* 48. *ſ.* 4.

Deſtroying trees, or burning wood, by the Black act.

10. By the 9 *G. c.* 22. commonly called the Black act, (which by the 24 *G.* 2. *c.* 57. hath continuance to *Sep.* 1. 1757, *&c.*) If any perſon ſhall unlawfully and maliciouſly cut down, or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſet fire to any ſtack of wood; or forcibly reſcue any perſon in cuſtody for any the ſaid offences; or by promiſe or reward procure any to join him therein; he ſhall be guilty of felony without benefit of clergy. And the hundred ſhall anſwer damages (not exceeding 200 *l.*) as in caſes of robbery by the 27 *El.*

That is to ſay, the party may either take remedy for his damages againſt the hundred by this act; or againſt the pariſh, town, hamlet, vill, or place where the offence was committed, by the aforeſaid acts of the 1 *G. ſt.* 2. *c.* 48. and 6 *G. c.* 16. as to him ſhall ſeem moſt meet. 29 *G.* 2. *c.* 36. *ſ.* 9.

Encouragement of the plantation of wood for relief of the poor.

11. It ſhall be lawful for the king and all other owners of waſtes, woods, and paſtures, wherein any perſons or bodies politick have common of paſture, with the aſſent of the major part in number and value of the owners and occupiers of tenements to which the right of common of paſture doth belong; and for the major part in number

and value of the owners and occupiers of ſuch tenements, with the aſſent of the owner of the ſaid waſtes, woods, and paſtures; and for any other perſon, with the aſſent and grant of the owner of ſuch waſtes, woods, and paſtures, and of the major part in number and value of the owners and occupiers of ſuch tenements,—to incloſe and keep in ſeveralty, for the growth and preſervation of timber or underwood, any part of ſuch waſtes, woods, and paſtures, for ſuch time, and in ſuch manner, and upon ſuch conditions, as ſhall be agreed by them reſpectively. 29 *G.* 2. *c.* 36. *ſ.* 1.

And all bodies politick or corporate, whether aggregate or ſole, feoffees in truſt, executors, adminiſtrators, guardians, committees, or other truſtees whatſoever, and the huſbands of femes covert, may agree to ſuch incloſure, and ſuch their agreement ſhall be valid. *ſ.* 5.

And in caſe the owner of ſuch waſtes, woods, or paſtures, and the major part in number and value of the owners and occupiers of ſuch tenements, ſhall jointly agree to aſſign their right for the purpoſe aforeſaid to any other perſon; and ſuch owner ſhall not have an eſtate in fee-ſimple therein, or ſhall be reſtrained from alienating; the recompence to be paid to ſuch owner, ſhall be either by a grant of a ſhare of the profit from the ſale of ſuch timber or underwood, or by a grant of other lands, or of an annuity or rent charge iſſuing out of the ground ſo incloſed, or out of other lands: ſuch equivalent to be held and enjoyed by the owner of ſuch waſtes, woods, and paſtures, and ſuch as ſhall be intitled to the ſame in reverſion, remainder, or ſucceſſion, in like manner as the eſtate in ſuch woods, waſtes, or paſtures is limited to be held and enjoyed. *ſ.* 2.

And where any recompence ſhall be agreed to be given for ſuch incloſure to, or to the benefit of, the owners and occupiers of ſuch tenements; it ſhall be made either by a grant of a ſhare of the profit which ſhall ariſe from the ſale of ſuch timber or underwood; or by a grant of other lands; or by ſome annuity or rent charge iſſuing out of the ground ſo incloſed, or out of other lands; or ſhall be paid in money, to be placed out at intereſt on publick ſecurities, or laid out in the purchaſe of lands, or of ſome annuity or rent charge iſſuing out of lands; and the produce thereof ſhall be paid to the overſeers, towards the relief of the poor of the pariſh or townſhip, where ſuch woods, waſtes, or paſtures ſhall be. *ſ.* 2.

And where the inhabitants of any pariſh or townſhip ſhall be willing to acquire ſuch right of incloſure, for the employment and benefit of their poor, they may (by the

conſent and direction of the major part of the inhabitants aſſembled at a veſtry or publick meeting to be held for that purpoſe, publick notice thereof in the church being firſt given on three ſundays before) pay the recompence for the ſame, and the charges of incloſing and preſerving ſuch grounds, out of the poor rate; and ſhall apply the profit from the ſale of ſuch timber or underwood, towards the relief of the poor. *ſ.* 2. *Note, here is no allowance for the charges of* planting.

And the agreement for ſuch incloſure ſhall be in writing, and ſigned by the parties, and within three months after the execution thereof be inrolled by the clerk of the peace where the greater part of ſuch waſtes, woods, or paſtures ſhall lie. *ſ.* 3.

And perſons aggrieved by ſuch agreement may within ſix months after the inrollment appeal to the ſeſſions, whoſe determination ſhall be final. And if no ſuch appeal ſhall be made, the agreement ſhall be for ever binding. *ſ.* 4.

And if any perſon, after the time limited for ſuch appeal, ſhall either by day or night unlawfully cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away, any trees growing in any ſuch incloſure, without conſent of the owner or owners thereof; ſuch owner ſhall have ſuch remedy, and receive ſuch ſatisfaction and recompence from the inhabitants of ſuch pariſhes, towns, hamlets, villages, or places adjoining to ſuch incloſures, and recover ſuch damages againſt them, and in the ſame manner and form, as is directed by the aforeſaid act of the 13 *Ed.* 1. *ſt.* 1. *c.* 46. unleſs the offender or offenders ſhall be convicted in ſix months. *ſ.* 6.

And two juſtices, or the juſtices in ſeſſions, on complaint, may cauſe every ſuch offender to be apprehended, and hear and determine the offence, and inflict the like penalty as is directed by the aforeſaid act of the 6 *G. c.* 16. *id. ſ.* 7.

Exporting wood.

12. By the 1 & 2 *P. & M. c.* 5. No perſon ſhall carry any wood out of the realm, on pain that the owner of the ſhip ſhall forfeit the ſhip and tackle; the owner of the wood, double value of the wood; and the maſter and mariners all their goods, and be impriſoned for a year. *ſ.* 2.

And if any perſon ſhall carry any wood to any ſhip, to be tranſported; the owners, maſters, and mariners, ſhall forfeit in like manner. *ſ.* 3.

And if any perſon ſhall obtain of the king a licence to tranſport wood, and ſhall carry more than is contained in his licence; he ſhall forfeit treble value, and be impriſoned for a year. *ſ.* 4.

And they which have licence, ſhall lade all at one place certain; on pain of forfeiting all their goods and chattels. *ſ.* 5.

The ſaid forfeitures to be half to the king, and half to him that ſhall ſue in any court of record: Moreover, all and ſingular juſtices of the peace, within three years after any offence committed, may hear and determine the ſame by a jury. *ſ.* 6.

A. Warrant to ſearch for ſtolen wood; on the 15 *C.* 2. *c.* 2.

Weſtmorland. { To the conſtable of ———.

WHEREAS A. I. *of* ——— *yeoman, hath this day made oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that divers quantities of wood, within the ſpace of ſix weeks laſt paſt, have been cut, taken, and carried away off and from his lands at* ——— *in the ſaid county* [or as the caſe ſhall be]; *and that he hath juſt cauſe to ſuſpect, and doth ſuſpect, that the ſaid wood, or part thereof, is concealed in the houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes, of* A. O. *of* ——— *yeoman, at* ——— *aforeſaid; Theſe are therefore to require you to enter into, and ſearch the ſaid houſes, outhouſes, yards, gardens, or other places belonging to ſuch houſes of him the ſaid* A. O. *at* ——— *aforeſaid; and if on ſuch ſearch you ſhall there find any ſuch wood, that then you apprehend the perſon in whoſe houſe, outhouſe, or other place it ſhall be found, and bring him before me, or ſome other of his majeſty's juſtices of the peace for the ſaid county, that ſuch proceedings may be had thereupon, as to law doth appertain. Given under my hand and ſeal at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

B. Order for ſatisfaction to the owner; on the 15 *C.* 2. *c.* 2.

Weſtmorland. WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that on or ſince the* ——— *day of* ——— *now laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at* ——— *in the pariſh of* ——— *in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect,*

that A. O. *of* ——— *in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the* ——— *day of* ——— *now laſt paſt, apprehended by* A. C. *conſtable of* ——— *in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or, *whereas a certain quantity of wood, ſuſpected to be ſtolen, was this day, by virtue of my warrant for that purpoſe directed to the conſtable of* ——— *in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at* ——— *aforeſaid*] *And whereas the ſaid* A. O. *being now brought before me, hath not given to me any ſatisfactory account how he came by the ſaid wood, nor can produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof; therefore the ſaid* A. O. *is convicted by me of cutting, ſpoiling, taking, and carrying away the ſaid wood; And whereas alſo it is duly proved before me, that* A. I. *of* ——— *aforeſaid, yeoman, was and is the owner of the ſaid wood, and that the ſaid offence was committed at* ——— *aforeſaid, in the pariſh of* ——— *in the ſaid county, I do therefore hereby order and appoint the ſaid* A. O. *within the ſpace of* ——— *days now next enſuing, to pay unto the ſaid* A. I. *the ſum of* ——— *in recompence and ſatisfaction for damages done unto him the ſaid* A. I. *by him the ſaid* A. O. *in cutting, ſpoiling, taking and carrying away the ſaid wood; and I do alſo hereby order the ſaid* A. O. *within the ſpace of* ——— *days now next enſuing as aforeſaid, to pay to the overſeers of the poor of the pariſh of* ——— *aforeſaid, for the uſe of the poor of the ſaid pariſh, the ſum of* 10 s. *for his ſaid offence. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ———

C. Commitment thereupon for non-payment.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at ——— in the ſaid county.

WHEREAS A. I. *of* ——— *in the ſaid county, yeoman, on the* ——— *day of* ——— *now laſt paſt, did make oath before me* J. P. *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that within the ſpace of ſix days then laſt paſt, a certain quantity of wood, the property of him the ſaid* A. I. *at* ——— *in the pariſh of* ——— *in the county aforeſaid, was cut and ſpoiled, and from thence taken and carried away; and that he had juſt cauſe to ſuſpect, and did ſuſpect, that* A. O. *of* ——— *in the ſaid county, yeoman, did cut, ſpoil, take, and carry away the ſame; And whereas the ſaid* A. O. *was on the* ——— *day of* ———

now laſt paſt, apprehended by A. C. *conſtable of* ——— *in the ſaid county, carrying wood ſuſpected to be ſtolen by him the ſaid* A. O. [Or, *whereas a certain quantity of wood, ſuſpected to be ſtolen, was on the* —— *day of* ——— *now laſt paſt, by virtue of my warrant for that purpoſe directed to the conſtable of* ——— *in the ſaid county, found in the houſe* (or other place) *of the ſaid* A. O. *at* ——— *aforeſaid*;] *And whereas the ſaid* A. O. *on the* ——— *day of* ——— *now laſt paſt, having been brought before me, did not and could not give to me any ſatisfactory account how he came by the ſaid wood, nor could produce the party of whom he bought the ſame, nor any credible witneſs to teſtify upon oath the ſale thereof, and thereupon was by me convicted of cutting and ſpoiling the ſaid wood, and ordered to pay to the ſaid* A. I. *the owner of the ſaid wood, the ſum of* ——— *within* ——— *days then next enſuing, in recompence and ſatisfaction for damages, and alſo the ſum of* 10s. *to the overſeers of the poor of the pariſh of* ——— *aforeſaid where the ſaid offence was committed, for the uſe of the poor of the ſaid pariſh; And whereas it appears to me, that the ſaid ſeveral ſums have been duly demanded of him the ſaid* A. O. *but that he the ſaid* A. O. *hath refuſed, and doth refuſe to pay, and hath not yet paid the ſame, nor any part thereof: I do therefore hereby require you the ſaid conſtable of* ——— *aforeſaid, to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, and to deliver him to the keeper thereof, together with this warrant: And I do hereby command you the ſaid keeper to receive him into your cuſtody in the ſaid houſe of correction, and there to detain him for the ſpace of* ——— *days. Herein fail you not. Given under my hand and ſeal, at* ——— *in the ſaid county, the* ——— *day of* ——— *in the* ——— *year* ———

D. If inſtead of being ſent to the houſe of correction, he is ordered to be whipt, then ſay, —— *I do therefore hereby command you the ſaid conſtable forthwith to receive the ſaid* A. O. *into your cuſtody, and to ſtrip him naked from the middle upwards, and whip him until his body be bloody.*

E. Order for the buyer of ſtolen wood, to pay treble damages; on the 15 C. 2. c. 2.

Weſtmorland. WHEREAS *it hath been duly proved before me* ——— *eſquire, one of his majeſty's juſtices of the peace for the ſaid county, that* A. O. *of* ——— *yeoman, did within the ſpace of ſix weeks now laſt paſt, buy ſeveral burdens of wood, of* B. O. *of* ——— *yeoman, and that he the ſaid* B. O. *is juſtly ſuſpected to have ſtolen the*

the ſame from A. I. *of* ——— *yeoman, and that the ſaid wood, at the time when the ſaid* A. O. *ſo bought the ſame, was of the value of* 10s. *I do therefore hereby order that the ſaid* A. O. *do forthwith pay unto the ſaid* A. I. *the ſum of* 30s. *the ſame being treble value of the ſaid wood ſo by him bought as aforeſaid. Given under my hand and ſeal, at* —— *in the ſaid county, the* —— *day of* —— *in the* —— *year of the reign of* ——

F. Warrant of diſtreſs for non-payment of the ſame.

Weſtmorland. { ———Here recite the order———Then ſay, *And whereas the ſaid* A. O. *hath not paid to the ſaid* A. I. *the aforeſaid ſum of* 30s. *nor any part thereof; Theſe are therefore to command you to make diſtreſs of the goods and chattels of him the ſaid* A. O. *and if within the ſpace of* [*five*] *days next after ſuch diſtreſs by you made, the ſaid ſum of* —— *together with reaſonable charges of taking and keeping the ſaid diſtreſs, ſhall not be paid, that then you do ſell the ſaid goods and chattels ſo by you diſtrained, and out of the money ariſing by ſuch ſale pay the ſaid ſum of* ——— *unto him the ſaid* A. I. *returning the overplus upon demand, unto him the ſaid* A. O. *the reaſonable charges of taking, keeping, and ſelling the ſaid diſtreſs being thereout firſt deducted. Given* &c.

G. Commitment for deſtroying trees; on the 1 *G. ſt.* 2. *c.* 48. and 6 *G. c.* 16.

Weſtmorland. { To the conſtable of ——— and to the keeper of the houſe of correction at —— in the ſaid county.

FORASMUCH *as* A. O. *of* ——— *in the county aforeſaid, yeoman, is this day duly convicted before us* ——— *eſquires, two of his majeſty's juſtices of the peace for the ſaid county, for that he the ſaid* A. O. *on the* ——— *day of* ——— *now laſt paſt, at* ——— *aforeſaid, in the county aforeſaid, did wrongfully and maliciouſly cut down two aſh trees* [or as the caſe ſhall be] *the property of* A. I. *of* ——— *yeoman, without the conſent of him the ſaid* A. I. *the owner thereof, or of any other perſon chiefly intruſted with the care and cuſtody thereof; We do therefore hereby command you the ſaid conſtable to convey the ſaid* A. O. *to the ſaid houſe of correction at* ——— *aforeſaid, in the county aforeſaid, and to deliver him to the keeper thereof, together with this precept. And we do alſo hereby require you the ſaid keeper of the ſaid houſe of correction, to receive him the ſaid* A. O. *into your*

cuſtody in the ſaid houſe of correction, and him there keep to hard labour, for the ſpace of three months now next enſuing, and until he ſhall find ſufficient ſureties for his good behaviour for two years: And we do likewiſe hereby order you the ſaid keeper of the ſaid houſe of correction, publickly to whip him the ſaid A. O. *once in every month during the ſaid three months, in the market town of ——— in the ſaid county, on the market day there, between the hours of eleven and two. And for ſo doing, this ſhall be your ſufficient warrant. Given under our hands and ſeals, at ——— in the ſaid county, the ——— day of ——— in the ——— year ———.*

Wool. See **Woollen manufacture.**

Woollen manufacture.

CONcerning differences between clothiers and their ſervants or workmen, ſee title **Servants.**

I have nothing to do under this title, but to reduce it into ſome kind of order, out of the confuſion of above an hundred ſtatutes; for, to the honour either of the laws, or of the people, there hath not occurred in all the books, one adjudged caſe, throughout this extenſive title. In truth, it is not the induſtrious labourer, but the idle and profligate, that doth create moſt trouble in the courts of law.

After having firſt premiſed, that in almoſt all the laws hereafter ſpecified under this title, it is enacted, that if any perſon ſhall be ſued for any thing done in putting them in execution, he may plead the general iſſue, and have treble coſts; I ſhall reduce theſe ſtatutes for the encouragement of the woollen manufacture, under the following heads:

I. I ſhall premiſe ſome ſtatutes which are not general enough to be treated of more at large.

II. Concerning the winding of wool by the ſeller.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

IV. Concerning cards for manufacturing of wool.

V. Concerning the deceitful working of woollen cloth.

VI. Concerning the fulling of cloth.

VII. Con-

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

VIII. Concerning the dying of cloth.

IX. Concerning tenters, and the ſtretching of cloth.

X. Concerning the dreſſing of cloth.

XI. Concerning mixed or medley broad cloth in particular.

XII. Concerning the Yorkſhire *manufacture in particular.*

XIII. Concerning burying of the dead in woollen cloth.

XIV. Againſt importation of woollen cloth.

XV. Encouragement of the exportation of woollen manufactures.

I. Statutes not general enough to be treated of more at large.

7 *Ed.* 4. *c.* 1. Worſted weavers in *Norwich* and *Norfolk.*

12 *H.* 7. *c.* 1. Worſted, ſays, and ſtamins in *Norfolk.*

5 *H.* 8. *c.* 2. White ſtraits in *Devon.*

6 *H.* 8. *c.* 8. Straits in *Devon.*

14 & 15 *H.* 8. *c.* 3. Worſteds in *Yarmouth* and *Linn.*

14 & 15 *H.* 8. *c.* 11. Veſes in *Suffolk.*

25 *H.* 8. *c.* 18. Clothiers in *Worceſterſhire.*

33 *H.* 8. *c.* 3. Folding of cloths in *North Wales.*

33 *H.* 8. *c.* 16. Worſted yarn in *Norfolk.*

1 *Ed.* 6. *c.* 6. Worſted yarn in *Norfolk.*

5 & 6 *Ed.* 6. *c.* 24. Hats, dornecks, and coverlets in *Norwich* and *Norfolk.*

1 & 2 *P. & M. c.* 14. Ruſſels ſattens, ſattens reverſes, and fuſtians of *Naples*, in *Norwich.*

2 & 3 *P. & M. c.* 13. An act of the inhabitants of *Hallifax* to buy wools.

1 *El. c.* 14. Woollen cloths in divers towns in the county of *Eſſex.*

8 *El. c.* 7. Drapers, cottoners, and frizers of *Shrewſbury.*

14 *El. c.* 12. Drapers, cottoners, and frizers of *Shrewſbury.*

35 *El. c.* 10. *Devonſhire* kerſeys or dozens.

13 & 14 *C.* 2. *c.* 5. Stuffs in *Norfolk* and *Norwich.*

13 & 14 *C.* 2. *c.* 22. Bay making in the *Dutch* Bayhall at *Colcheſter.*

22 & 23 *C.* 2. *c.* 8. *Kidderminſter* ſtuffs.

1 *G. ſt.* 2. *c.* 41. Bay making in *Colcheſter.*

9 *G. c.* 9. An act for the better qualifying the manufacturers of ſtuffs and yarn in the city of *Norwich*, and liberties thereof, to bear offices of magiſtracy in the ſaid city, and for regulating elections of ſuch officers.

3 *G.* 2. *c.* 8. Regulating elections in *Norwich.*

II. Concerning the winding of wool by the ſeller.

1. No man ſhall make any inwinding within the fleece, at the rolling up of his wool; nor put in the ſame, locks, pelt wool, tar, ſtones, ſand, earth, graſs, nor any dirt; and if he do, the party grieved may bring his action at common law of treſpaſs and deceit. 8 *H.* 6. *c.* 22.

2. No perſon ſhall wind any fleece not ſufficiently waſhed, except in counties where they do not uſe to waſh ſheep; nor ſhall wind within any fleece, clay, lead, ſtones, ſand, tails, deceitful locks, cot, cals, comber, lamb's wool, or any other thing whereby the fleece may be the more weighty, to the deceit and loſs of the buyer, (except where fleeces are ſold by number, and not by weight;) on pain that the ſeller ſhall forfeit 6*d.* a fleece, half to the king, and half to him that ſhall ſue. 23 *H.* 8. *c.* 17.

III. Laws to prevent the exportation of wool from Great Britain, *and of wool and woollen cloth from* Ireland; *and therein alſo of fuller's earth.*

Several things premiſed.

1. To avoid frequent repetitions under this head, it may be proper to premiſe (once for all) theſe things following:

(1) Notwithſtanding the limitation of actions by the proſecutor in the following ſections, to one year after the offence committed; yet by a general clauſe 9 & 10 *W. c.* 40. The king may cauſe perſons guilty of exporting wool, woolfells, fuller's earth, or ſcouring clay, to be proſecuted at any time in three years. *ſ.* 9.

(2) That all actions, ſuits, and informations upon any act for preventing exportation of wool, wool fells, wool flocks, mortlings, ſhorlings, worſted, bay or woollen yarn, cruels, or wool ſlightly manufactured, or mattraſſes, or beds ſtuffed with combed wool, or wool fit for combing, fuller's earth, fulling clay, tobacco pipe clay, or any other ſcouring earth or clay, from *Great Britain* or *Ireland*; or for preventing the exportation from *Ireland* into foreign parts, of cloth, ſerges, bays, kerſeys, frizes, druggets, ſhalloons, ſtuffs, cloth ſerges, or any other drapery made

of

of or mixed with wool, manufactured in *Ireland*,——may be entred and profecuted (except as is herein after otherwiſe expreſſed) in any court of record at *Weſtminſter*, or in the court of exchequer in *Scotland*, or at the quarter ſeſſions of the peace, or before any two juſtices out of ſeſſions in a ſummary way, or in *Ireland* by any law relating to the revenue. And if the property be claimed by any perſon, the proof ſhall lie upon him, and not on the officer or ſeizer. 12 *G.* 2. *c.* 21. *ſ.* 18.

Which clauſe hath enlarged this article very much; by bringing in all thoſe ſtatutes, with which the juſtices before had nothing to do.

(3) And if the proſecution is in any court of record at *Weſtminſter*, for any of theſe offences, in or before the ſtatute of the 10 & 11 *W.* *c.* 10. a *capias* ſhall iſſue after the firſt proceſs, ſpecifying the ſum of the penalty ſued for; and ſuch perſon ſhall give good bail to the officer ſerving the proceſs, to appear to anſwer to the proſecution; and at the time of appearance ſhall give bail in court, to pay the penalties if convicted, or yield his body to priſon. *ſ.* 20.

And if any perſon ſhall be in priſon for want of bail, for exportation of wool or wool fells (or for aiding or abetting the ſame, 12 *G.* 2. *c.* 21. *ſ.* 27.) and ſhall refuſe to appear or plead to a declaration or information to be delivered to him or to the gaoler, by the ſpace of one term, judgment ſhall be entred againſt him by default; and if judgment be ſo obtained againſt him by default, (or by verdict, or otherwiſe), and he pay not in three months the ſum recovered, the court ſhall order him to be tranſported for ſeven years. 4 *G.* *c.* 11. *ſ.* 6.

(4) And to prevent colluſive ſeizures, or fraudulent agreements to evade the penalties, None but officers of the cuſtoms, exciſe, or ſalt, except the officers of the guard ſhips hereafter mentioned, ſhall enter informations of ſeizures of wool or woollen goods; which ſhall be proſecuted in their, or in the attorney general's name, and not otherwiſe. 12 *G.* 2. *c.* 21. *ſ.* 14, 15.

And if ſuch officer make any ſuch colluſive ſeizure, or fraudulent agreement, he ſhall forfeit 200*l.* and be diſqualified for any office in the revenue; and the owner making ſuch agreement with him, ſhall forfeit treble value; to him who ſhall ſue in the courts at *Weſtminſter*, *Dublin*, or *Edinburgh*. *id.* *ſ.* 16.

But if any perſon concerned in ſuch fraudulent ſeizure or agreement, ſhall firſt (in three months) diſcover his offence to the commiſſioners of the cuſtoms, ſo that one accomplice

plice be convicted; he ſhall be diſcharged of the penalties, and ſhall have the whole money recovered on the conviction (the charges firſt deducted). *ſ.* 17.

And if any perſon ſhall oppoſe or hinder any the ſaid officers, or their aſſiſtants, in ſeizing any the goods before mentioned; or if any perſon armed, or diſguiſed, ſhall attempt to reſcue any the ſaid goods ſeized; he ſhall be tranſported for ſeven years. *ſ.* 26.

And moreover, if any perſon offer a bribe to any officer for connivance; he ſhall forfeit 300 *l.* to him who ſhall ſue in any court of record at *Weſtminſter*. *ſ.* 25.

(5) On condemnation of any wool, or other goods abovementioned, the commiſſioners of the cuſtoms reſpectively ſhall cauſe them to be publickly ſold to the beſt bidder, where they ſhall think proper; and out of the produce of ſuch ſale, ſhall cauſe the charges of condemnation and ſale to be paid, and the remainder to ſuch perſon who ſhall ſeize, inform, or ſue. 12 *G.* 2. *c.* 21. *ſ.* 20.

But if the officers ſhall receive information from any perſon, whereby any ſeizure is made, or any proſecution effected; ſuch informer ſhall have half of what ſhall be recovered. *ſ.* 21.

And if any perſon convicted in the penalty of 3*s.* a pound (hereafter mentioned) be not able to pay; the commiſſioners may cauſe 1*s.* a pound to be paid to the informer or proſecutor, by the receiver of the revenue. *ſ.* 22.

And for the proſecutor's further encouragement, by the 19 *G.* 2. *c.* 34, hereafter following, If on an information for ſeizure of wool (during the continuance of the ſaid act) a verdict is found for the claimer; yet if the judge ſhall certify upon the record, that there was probable cauſe of ſeizure, the claimer ſhall have no coſts. *ſ.* 16.

Exporting of wool, felony.

2. By the 13 & 14 *C.* 2. *c.* 18. The exportation of wool was made felony; but this was repealed by the 7 & 8 *W.* *c.* 28. and the preamble to the repealing clauſe ſets forth, that by the ſeverity of the penalty, the proſecution of offenders had not been ſo effectually put in execution. But it doth not appear, why a reward for the informer or proſecutor was not thought of at that time.

Pecuniary and other penalties and forfeitures.

3. By the 12 *C.* 2. *c.* 32. No perſon ſhall export, nor pack or load upon any horſe, cart, or carriage, nor lay on board, with intent to export, any wool, wool fells, mortlings, ſhorlings, or any yarn made of wool, or any wool flocks, or any fuller's earth, or fulling clay; on pain of forfeiting the ſame, and that every offender ſhall forfeit moreover 3*s.* for every pound weight thereof. *ſ.* 1, 3.

(By

(By the 7 & 8 *W.* *c.* 28. which, by the way, is a confuſed and ill penned act, another penalty is appointed, to wit, the forfeiture of ſuch goods, and treble value, with treble coſts; ſo that it ſeemeth, the offender may be proſecuted either for the wool and 3*s.* a pound, or for treble value with treble coſts.)

And the owner of the ſhip, knowing the offence, ſhall forfeit all his intereſt in the ſhip and furniture. 12 *C.* 2. *c.* 32. *ſ.* 3. 7 & 8 *W.* *c.* 28. *ſ.* 8.

And the maſter and mariners, knowing the offence, and aſſiſting thereunto, ſhall forfeit all their goods and chattels, and be impriſoned three months. 12 *C.* 2. *c.* 32. *ſ.* 3.

And by the 6 *G.* *c.* 21. If the maſter, purſer, or other perſon taking charge of the ſhip ſhall ſuffer any of the ſaid goods, or any tobacco pipe clay, to be taken in from ſhore, to be carried beyond ſea, he ſhall beſides any former penalties, be impriſoned ſix months. *ſ.* 32.

But if any maſter, mate, or mariner, ſhall in ſix months give an account to the commiſſioners of the cuſtoms, of ſuch ſhip, and goods, and offenders, ſo as any may be convicted; he ſhall be indemnified, and ſhall have moreover three fourths of the penalties recovered, clear of charges, and the king ſhall have the other fourth, charges deducted. 12 *G.* 2. *c.* 21. *ſ.* 23.

And any merchant, or other perſon, offending herein, ſhall be diſabled to require any debt or account belonging to him from any factor or other. 12 *C.* 2. *c.* 32. *ſ.* 4.

And the ſaid offences may be tried either in the county where the goods were packed, loaden, or laid aboard, or where the offender is apprehended. 12 *C.* 2. *c.* 32. *ſ.* 5.

And the ſhip, if an alien, or perſon not inhabiting in *England*, be the owner or part owner thereof, ſhall be forfeited to the king. 12 *C.* 2. *c.* 32. *ſ.* 9.

And all perſons aiding or aſſiſting therein, being convicted in one year, ſhall ſuffer three months impriſonment. 7 & 8 *W.* *c.* 28. *ſ.* 10, 11. Provided, that the firſt three perſons, who have been aiding or aſſiſting (not being owners or part owners thereof) who ſhall inform any juſtice of the peace of ſuch offence, whereby the penalties may be recovered, ſhall not ſuffer ſuch penalty. *ſ.* 11.

And moreover, all ſuch exportation ſhall be deemed a publick nuſance. 13 & 14 *C.* 2. *c.* 18. *ſ.* 11.

4. And no coverlids, waddings, or other manufactures, ſlightly wrought, ſo as they may be reduced to wool again; or mattraſſes or beds ſtuffed with combed wool, or wool fit Exporting wool ſlightly wrought.

for

for combing, ſhall be exported from *Great Britain* or *Ireland*; on the like pain as for exporting wool. 12 *G.* 2. *c.* 21. *ſ.* 9.

Exporting fuller's earth in the name of tobacco pipe clay.

5. And whereas fuller's earth, or fulling clay, is exported under colour of tobacco pipe clay, therefore no tobacco pipe clay ſhall be exported, on pain of 3*s.* a pound. 13 & 14 *C.* 2. *c.* 18. *ſ.* 8.

Exporting fuller's earth to Ireland.

6. Nor ſhall any fuller's earth, or ſcouring clay, be exported into *Ireland*; on pain of 1*s.* a pound. 9 & 10 *W.* *c.* 40. *ſ.* 2.

Exporting wool to Jerſey, Guernſey, &c.

7. Nevertheleſs, wool may be exported from *Southampton*, to *Jerſey*, *Guernſey*, *Sark*, and *Alderney*, for the ſole uſe of the inhabitants there; ſo as the perſon ſhipping the ſame deliver to the cuſtomer of the port, a writing under the ſeal of the governor of the iſland, or his deputy, ſetting forth that ſuch perſon is authorized to export thither ſuch a quantity, and that he hath entred into bond to land it there; and ſo as it exceed not in one year to *Jerſey* 4000 tods, *Guernſey* 2000, *Alderney* 400, and *Sark* 400; every tod not exceeding 32 pounds. 12 *C.* 2. *c.* 32. *ſ.* 12, 13, 14. 1 *W.* *c.* 32. *ſ.* 14.

Packing of wool.

8. And no wool, wool fells, mortlings, ſhorlings, wool flocks, worſted, bay or woollen yarn, ſhall be packed up in any box, barrel, caſk, caſe, cheſt, or any other package, but only in packs of leather or packcloth; on which ſhall be marked on the outſide the words WOOL or YARN, in large letters not leſs than three inches long: on pain of forfeiting the ſame, and the package, and 3*s.* for every pound weight, to be paid by the owner or packer. 12 *G.* 2. *c.* 21. *ſ.* 10.

To be carried only by day.

9. And no wool, wool fells, mortlings, ſhorlings, woollen yarn, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, ſhall be carried by land, but in the day time only, namely, from *Mar.* 1. to *Sep.* 29. between four in the morning, and eight at night; and from *Sep.* 29. to *Mar.* 1. between ſeven in the morning, and five at night: on pain of forfeiting the ſame or the value. 13 & 14 *C.* 2. *c.* 18. *ſ.* 9.

Carrying wool from port to port, or by land near the coaſt.

10. Every owner of wool, who ſhall carry, or cauſe to be carried any wool, (wool fells, mortlings, ſhorlings, yarn made of wool, wool flocks, fuller's earth, fulling clay, or tobacco pipe clay, 5 *G.* *c.* 11. *ſ.* 14.) to any port or place on the ſea coaſt, with intention to convey the ſame to any other port or place on the coaſt, from whence the ſame may be carried off to foreign parts; ſhall firſt cauſe an entry thereof to be made at the port, from whence it is intended to be conveyed, containing the weight, mark, and number, before he carry the ſame within five miles of

ſuch

ſuch port: on pain of forfeiting the ſame, and alſo the horſes, carts, and other carriages; and alſo of ſuffering and forfeiting, as by the other laws in force againſt the exportation of wool. 1 *W.* *c.* 32. *ſ.* 2.—But this ſhall not hinder any perſon from carrying his wool home from the place of ſhearing, tho' it be within five miles of the ſea; provided that in ten days after ſhearing, and before he remove the wool, he do under his hand certify to the next officer of the cuſtoms, the true number of fleeces, and where it is houſed; and do not remove the ſame, without certifying to ſuch officer, under his hand, his intention ſo to do, three days before. 1 *W.* *c.* 32. *ſ.* 3.

And no wool, wool fells, mortlings, ſhorlings, wool flocks, worſted, bay or woollen yarn, worſted yarn, cruels, or wool ſlightly manufactured, ſhall be put on board any veſſel, to be carried coaſtwiſe, or from one port to another in *Great Britain* or *Ireland*, without notice given to the officers of the port, and bond given for the landing thereof, and a licence taken from ſuch officers for ſo doing; on pain of forfeiting the ſame, with the veſſel and furniture; and the bond to be ſued, if a certificate of landing the goods is not brought in ſix months. 12 *G.* 2. *c.* 21. *ſ.* 11.

And to prevent colluſive landing, none of the ſaid goods, carried coaſtwiſe, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3*s.* for every pound, to be paid by the owner. *id.* *ſ.* 13.

And all cocquets for carrying wool from any port, ſhall be written on paper, and not parchment (to prevent eraſing), and ſigned by three officers of the port; and all certificates of landing the ſame again in any other port, ſhall be ſigned in like manner: And all ſuch wool, both at ſhipping and landing, ſhall be weighed in the preſence of the ſaid officers; and the weight, marks, and number of ſuch wool ſo ſhipped and landed, ſhall be expreſſed both in cocquet and certificate. 1 *W.* *c.* 32. *ſ.* 4.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool ſent from port to port in this kingdom, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W.* *c.* 32. *ſ.* 11.

And officers not obſerving the directions of this act, ſhall be deemed abettors of the exportation. *id.* *ſ.* 5.

In Kent and Suſſex: Every owner of wool, within 10 miles of the ſea, ſhall give an account in writing, in three days after ſhearing, of his number of fleeces, and where lodged,

lodged, to the next officer of the cuſtoms; and the like notice, before he remove any part thereof, of the number of fleeces and weight, and the name and abode of the perſon to whom it is diſpoſed, and the place whither intended to be carried; and ſhall take a certificate from the officer who firſt entred the ſame (paying 6*d.*); on pain of forfeiting the wool, and alſo 3*s.* for every pound thereof, as if it had been actually exported. 9 & 10 *W.* *c.* 40. *ſ.* 3.—And no perſon within 15 miles of the ſea, in the ſaid counties, ſhall buy any wool, before he enters into bond to the king, with ſureties, that all the wool he ſhall buy, ſhall not be ſold by him to any perſon within 15 miles of the ſea; and if any wool be found carrying towards the ſea ſide, in the ſaid counties, unleſs it be firſt entred, and ſecurity given, it ſhall be forfeited, and the offender ſhall alſo forfeit 3*s.* a pound. *id.* *ſ.* 4.—And no wool removed from the place where it was firſt lodged after ſhearing, within ten miles, ſhall be lodged, after the firſt removing, within 15 miles of the ſea in the ſaid counties; on pain of forfeiting all ſuch wool, if found; but if carried away, the owner ſhall forfeit 3*s.* a pound. *id.* *ſ.* 5.——And every perſon that ſhall lay any wool within 15 miles of the ſea, and not entred as aforeſaid, all ſuch wool ſhall be ſeized and forfeited; and every perſon claiming the ſame (upon ſuch ſeizure) ſhall give ſurety in the exchequer, if he ſhall be caſt upon trial, to pay treble coſts, over and above the ſaid penalties. *id.* *ſ.* 6.

And no wool, wool fells, mortlings, ſhorlings, woollen yarn, wool flocks, fuller's earth, or ſcouring clay, ſhall be loaden on any horſe or carriage, or carried by land, within 15 miles of the coaſt, but between ſun riſing and ſun ſetting; on pain of forfeiting the ſame, and the horſes and carriages. *id.* *ſ.* 8.

Hundred to forfeit treble value.

11. And the hundred next adjoining to the ſea coaſts, out of or thro' which the ſame is carried or exported, ſhall forfeit 20*l.* if the wool ſo carried out or exported ſhall be under the value of 10*l.* but if of greater value, then treble the value thereof, with treble coſts; to be ſued for within a year. 7 & 8 *W.* *c.* 28. *ſ.* 8. 12.

The execution to be againſt any two of the inhabitants; and the ſeſſions ſhall make an aſſeſſment to reimburſe them, as in caſes of robbery. *ſ.* 9.

And any perſon compounding with the hundred for leſs, ſhall be impriſoned five years, and another perſon may proſecute. *ſ.* 13.

And the owner of the wool, or of any other the commodities aforeſaid, and every perſon aiding in carrying or exporting any of them out of the kingdom, ſhall anſwer

ſwer ſuch treble value to the ſaid inhabitants, as alſo treble coſts; to be recovered by them in the name of the clerk of the peace, in any court of record at *Weſtminſter*. *ſ.* 10.

12. By the 19 *G.* 2. *c.* 34. which by the 26 *G.* 2. *c.* 32. hath continuance to *Jun.* 24. 1758, *&c.* If any perſons armed, to the number of three or more, ſhall be aſſembled to aſſiſt in the illegal exportation of wool, or in the carrying of wool in order to exportation, or in reſcuing the ſame after ſeizure, or in reſcuing an offender herein, or preventing his being apprehended, or ſhall be aiding in any the premiſſes; or if any perſon ſhall have his face diſguiſed when paſſing with ſuch wool, or ſhall forcibly hinder or aſſault any officer in ſeizing the ſame, or dangerouſly wound any ſuch in attempting to go on board any veſſel, or ſhoot at or wound him when on board in execution of his office,—he ſhall be guilty of felony without benefit of clergy. Riotous exportation.

And if information, ſubſcribed, and on oath, be made hereof before a juſtice of the peace; he ſhall forthwith certify the ſame under hand and ſeal, and return the information to a ſecretary of ſtate, who ſhall lay the ſame before the king in council; and the king thereon may make order, in two ſucceſſive gazettes, for the offender to ſurrender in 40 days to ſome juſtice of the peace (who ſhall thereon commit him): The ſame order to be ſent to the ſheriff; who ſhall in 14 days after receipt, cauſe it to be proclaimed, between the hours of 10 and 12, on the market days, in two market towns, near to the place where the offence was committed, and a copy thereof to be affixed in ſome publick place in ſuch market towns. And if he ſhall not ſurrender, or eſcape after ſurrender, he ſhall likewiſe be guilty of felony without benefit of clergy.

But if he ſhall be taken before the time of ſurrender, he ſhall have a legal trial.

And if after the time of ſurrender, any perſon ſhall knowingly harbour him, he ſhall, on proſecution within a year, be guilty of felony, and be tranſported for ſeven years.

And if any officer in ſeizing the wool, or endeavouring to apprehend offenders, be beaten or killed, or the wool ſeized be reſcued, the hundred ſhall anſwer damages, as in caſes of robbery, not exceeding 40 *l.* for any beating, nor 200 *l.* for loſs of the wool; and ſhall pay 100 *l.* to the executor or adminiſtrator of ſuch perſon killed: Provided that notice of the offence be given to, or left at the houſe

of ſome conſtable near the place, as ſpeedily as conveniently may be, deſcribing the offender, time, and place; and alſo, in four days, to two inhabitants near; and in eight days, oath be made before a juſtice, whether he knows the offender, and if he does, entring into recognizance to proſecute; and in 20 days, like notice be given in the gazette; and 100 *l.* bond, with two ſureties, be given before the ſheriff, to the high conſtable, to pay coſts, if caſt; and provided, that an offender is not convicted in ſix months; and that the action be commenced within a year.

And if any perſon ſhall be maimed or grievouſly wounded in apprehending ſuch offender, he ſhall have moreover a further reward of 50 *l.* to be paid by the commiſſioners of the cuſtoms or exciſe.

And the executors or adminiſtrators of ſuch perſon killed, ſhall have from them 100 *l.* over and above what is paid by the hundred.

And if any perſon ſhall take an offender advertiſed, and not ſurrendred, and bring him before a juſtice of the king's bench, or juſtices of the peace for *London* or *Middleſex*, (to be by them committed to *Newgate*), he ſhall receive 500 *l.* reward, from the ſaid commiſſioners.

And an offender, not outlawed, apprehending an outlawed accomplice, ſhall have a pardon, and alſo the reward.

And an offender, not outlawed, convicting two accomplices not outlawed, ſhall have a pardon, and 50 *l.* for each.

Exporting wool out of Ireland in particular.

13. By the 26 *G.* 2. *c.* 11. It ſhall be lawful for any perſon, to export from any port in *Ireland*, any wool, or woollen or bay yarn, wool fells, ſhortlings, mortlings, wool flocks, and worſted yarn, to any port in *Great Britain*.

But no perſon ſhall export, or load, or ſhip, with intent to export, any wool, wool fells, ſhortlings, mortlings, or any woollen cloth or manufacture, out of *Ireland*, except it be into *Great Britain*; on pain of forfeiting the ſame, and the ſhip, and alſo 500 *l.* and the maſter, mariners, and others aſſiſting, 40 *l.* 10 & 11 *W. c.* 10. *ſ.* 1, 2.

But the firſt three perſons, not being owners or part owners, who have been aiding in exporting the ſame, that ſhall inform any juſtice of the peace, whereby the penalties may be recovered; ſhall be freed from all penalties for the ſame. 3 *G. c.* 21. *ſ.* 5.

And bond of double value of the goods ſhall be given to the officers of the cuſtoms, for every ſhip exporting the ſame, that they ſhall be landed in *Great Britain*. 10 & 11 *W. c.* 10. *ſ.* 5.

And no wool, or any of the ſaid goods, ſhall be brought into *Great Britain* from *Ireland*, but in ſhips of the built of *Great Britain* or *Ireland*; on pain of forfeiting the goods, or the value, together with the ſhip and furniture. 12 *G.* 2. *c.* 21. *ſ.* 6.

And to prevent colluſive landing, none of the ſaid goods imported from *Ireland*, ſhall be landed but in preſence of the officers, and at the proper quays; on pain of forfeiting the ſame, or the value, and 3*s.* for every pound, to be paid by the owner. *id. ſ.* 13.

And the commiſſioners of the cuſtoms in *Ireland*, ſhall every ſix months tranſmit to the commiſſioners of the cuſtoms in *England*, an account of wool exported, from whence, the quantity and weight, by whom, in what ſhip, where conſigned, names of the perſons in *England* ſigning certificates of landing the ſame, with the dates of ſuch certificates, and where landed, and the quantity and weight contained in the certificates: Which certificates ſhall not be obliterated or interlined, and ſhall be written on paper and not parchment. 7 & 8 *W. c.* 28. *ſ.* 6, 7.

And a regiſter ſhall be kept at the cuſtom houſe, *London*, of all the wool imported from *Ireland*, the weight, number, ſhip, maſter's name, owner's name, and to whom conſigned; for the uſe of the commiſſioners. 1 *W. c.* 32. *ſ.* 11.

14. The commiſſioners of the admiralty ſhall appoint 2 fifth rate ſhips, 2 ſixth rates, and 8 armed ſloops, conſtantly to cruiſe on the coaſts, particularly between the north of *Ireland* and *Scotland*, with orders to ſeize all ſhips exporting wool to foreign parts. And all wool, and veſſels ſo ſeized ſhall be forfeited, and the wool lodged in the king's warehouſe till condemned; and then the ſame after 21 days (together with the veſſels ſo condemned) ſhall be ſold by inch of candle, notice being firſt given at the cuſtom houſe of the port where lodged, and on the *Royal Exchange* at *London*; one fourth of the produce to the commander, one fourth to the officers, one fourth to the mariners, and one fourth to the king (charges of proſecution and condemnation being firſt paid out of the king's part.) And the commander neglecting his duty herein, ſhall forfeit his wages, and office, and be impriſoned ſix months. 10 & 11 *W. c.* 10. *ſ.* 16, 17, 18. Guard ſhips.

And they ſhall alſo appoint 3 ſixth rate ſhips, and 8 or more armed ſloops, to cruiſe on the *Britiſh* and *Iriſh* coaſts, with orders for ſeizing all ſhips wherein any woollen manufactures are exported from *Ireland*; which ſhips and goods ſhall be forfeited, one fourth to the commander, one fourth to the officers, one fourth to the mariners, and one fourth

to the king, the charges being firſt paid out of the king's part. But if the ſeizure was at the information of any perſon, ſuch informer ſhall have a fifth part, and the reſidue be diſtributed as above. 5 *G.* 2. *c.* 21. *ſ.* 1, 2, 3.

Exporting wool or woollen manufactures, from America.

15. No wool, or woollen manufactures, ſhall be exported from any of the *American* colonies, on the like pain as from *Ireland.* 10 & 11 *W.* *c.* 10. *ſ.* 19.

Inſuring wool to be landed in foreign parts.

16. Perſons inſuring wool, and other the ſaid goods, to be landed in foreign parts, and alſo perſons agreeing to pay the money for ſuch inſuring, ſhall forfeit 500*l.* to him who ſhall ſue in any court of record at *Weſtminſter*, in the name of an officer of the cuſtoms, exciſe, or ſalt, or of the attorney general. 12 *G.* 2. *c.* 21. *ſ.* 29, 30, 32.

And the inſurer informing ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party; and ſhall alſo keep the inſurance money paid to him: And the inſured informing ſhall receive back his inſurance money if paid; and if not paid, ſhall be indemnified from paying it; and ſhall be diſcharged of his own penalty; and ſhall have the forfeiture of the other party. *id.* *ſ.* 31.

And all inſurances of wool, and woollen goods, and other the goods before mentioned, ſhall be void. *id.* *ſ.* 33.

IV. Concerning cards for the manufacturing of wool.

No foreign wool cards, or card wyre, ſhall be imported, or uſed; nor ſhall any wyre be taken out of old cards, and put into new leather and boards, nor any cards made thereof be put to ſale; on pain of forfeiting the ſame, or the value thereof if the ſame be not ſeized, half to the king, and half to him that ſhall ſeize or ſue for the ſame in any court of record at *Weſtminſter*, or within the county, city, or town corporate, where the offence ſhall be committed. 13 & 14 *C.* 2. *c.* 19.

V. Concerning the deceitful working of woollen cloth.

1. No perſon ſhall put any hair, flocks, thrums, or yarn of lamb's wool, or other deceivable thing in any woollen cloth, on pain of forfeiting the ſame; and the perſon procuring ſuch deceitful thing for that purpoſe, ſhall likewiſe forfeit the ſame; half to the finder, and half to the poor. 43 *El.* *c.* 10. *ſ.* 2, 12.

2. But in the caſe of *broad* cloth, by the 21 *J.* *c.* 18. the aboveſaid penalty is mitigated; which enacteth, that no perſon ſhall put any flocks, noiles, thrums, hair, or other deceivable

deceivable thing, in any broad cloth; on pain of 5 *l.* (and no greater penalty) to the poor. *ſ.* 3.

And for the better diſcovery thereof, two juſtices, on information of any one of his knowledge or ſuſpicion of ſuch offence, may grant their warrant to call before them any perſon that ſhall in their diſcretions be thought fit to diſcover any ſuch offence, and examine them on oath; and if it be found, by two witneſſes, or confeſſion, they ſhall certify the ſame under their hands and ſeals to the churchwardens and overſeers; who ſhall upon ſuch certificate, and by warrant of ſuch juſtices, levy the penalty by diſtreſs: in default of diſtreſs, to be committed to gaol till paid. *ſ.* 4, 5.

And the ſearchers ſhall ſet upon the ſame the word [*faulty*;] and no perſon ſhall ſearch the ſame again, on pain of 5 *l.* to the party grieved, who ſhall ſue for the ſame by bill, plaint, or information, at the ſeſſions. 21 *J. c.* 18. *ſ.* 7.

3. No clothier ſhall uſe, or cauſe to be uſed, any ends of yarn, wefts, or other refuſe of cloths, druggets, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted,) by working the ſame up again into any ſort of goods; on pain of 5 *l.* on conviction before two juſtices on information on oath, in three months after the offence; to be levied by diſtreſs; half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made. But perſons aggrieved may appeal to the next ſeſſions, giving ſix days notice in writing; who may order coſts and damages, and levy the ſame by diſtreſs, by their order or warrant; for want of diſtreſs, may commit the party to gaol, or to the houſe of correction not exceeding three kalendar months, or until ſatisfaction ſhall be made. And no certiorari ſhall lie on this act. 13 *G. c.* 23. *ſ.* 3, 4, 6.

And if any perſon ſhall be found collecting, buying, or carrying, in any bag or other convenience, any ſuch ends of yarn, wefts, thrums, ſhort yarn, or other refuſe of cloth, drugget, or other woollen goods, or goods mixed with wool (flocks and pinions only excepted); the conſtable may, by warrant of one juſtice, ſearch ſuch perſon, bag, or convenience, and if any the ſame be found, he ſhall carry the offender before a juſtice of the peace, and on conviction before him, by confeſſion, or oath of one witneſs, he ſhall be deemed an incorrigible rogue, and liable to be puniſhed as ſuch. 13 *G. c.* 23. *ſ.* 8. 17 *G.* 2. *c.* 5. *ſ.* 4.

VI. Concerning the fulling of cloth.

Every fuller, in his craft and occupation of fulling, rowing, or tayſeling of cloth, ſhall uſe tayſels, and no cards, deceitfully impairing the ſaid cloth, on pain to yield to the party grieved his double damage: And every juſtice of the peace, mayor, maſter, warden, bailiff, portreve, conſtable of hundred, and ſteward of leet in their reſpective liberties, may hear and determine the ſame, and commit the offender to the next gaol till payment. And alſo any perſon not grieved may make information to any ſuch juſtice, mayor, maſter, warden, bailiff, portreve, or ſteward; in which caſe the offender ſhall forfeit to the king, or to ſuch perſon as ſhall be intitled to fines or amercements within their juriſdiction, 3*s.* 4*d.* and they may make proceſs againſt the party in like manner as juſtices of the peace may do for ſureties of the peace, without any fee to be taken for the execution of their offices in this behalf. 4 *Ed.* 4. *c.* 1. *ſ.* 6.

And no cloth, not fulled, ſhall be exported; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 7 *Ed.* 4. *c.* 3.

The laws for preventing the exportation of fuller's earth, have been treated of under the article concerning the exportation of wool.

VII. Concerning the ſearching of cloth, and therein of the length, breadth, and weight thereof.

Yard and inch.

1. For the meaſuring of cloth, the ſtatutes do generally provide, that the yard ſhall conſiſt of a ſtandard yard, and the breadth of a man's thumb beſides; or 37 inches in the whole.

Overſeers of cloth.

2. In every pariſh and hamlet where cloths are made, two juſtices (and in corporations, the mayor, together with one juſtice of the ſhire next adjoining) ſhall once a year, or oftner, call before them, by precept or otherwiſe, 2, 4, 6, 8, or more, of the moſt honeſt, diſcreet, and able men of ſuch place, and appoint them overſeers for a year, or ſix months, or ſhorter time; and ſhall take them ſworn, and bound in recognizance of 40*l.* each, to do their beſt endeavour by all lawful ways and means to ſee the ſtatutes obſerved relating to the regulation of cloth. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 9. 39 *El. c.* 20. *ſ.* 4. 43 *El. c.* 10. *ſ.* 7.

And any perſon, without reaſonable excuſe, refuſing to be overſeer, ſhall forfeit 5*l.* half to the king, and half to ſuch

ſuch juſtices; and to remain in ward of the ſheriff, till paid or ſecured. 39 *El. c.* 20. *ſ.* 5.

3. And the ſaid overſeers, or two of them, ſhall once a month at leaſt, or ſo often as need ſhall require, go into the houſes and rooms where the cloth ſhall be, and ſearch, and try the ſame, by water, weight, or any other way. 39 *El. c.* 20. *ſ.* 4. Overſeers to ſearch.

And if any ſhall withhold cloth, or deny ſearch; he ſhall, on conviction thereof at the ſeſſions, forfeit for the firſt offence 10 *l.* for the ſecond 20 *l.* for the third, being convicted by verdict and two witneſſes, he ſhall ſtand upon the pillory in the next market town. 39 *El. c.* 20. *ſ.* 5.

Which ſaid forfeitures ſhall be, one third to the overſeers, one third to the king, and one third to the poor, as the ſeſſions ſhall appoint. *id. ſ.* 9.

4. And by the 4 *J. c.* 2. (which is a judicious act, as are many in that king's reign) the ſeveral ſorts of cloth ſhall be in length and breadth at the water, when thoroughly wet, and in weight when ſcoured, thicked, milled, and fully dried, as followeth: Length, breadth, and weight of cloth.

	Yards long	Quarters broad	Pounds weight
Long coloured broad cloth	30 to 34	6 ½	86
Long *Worceſter*	30 to 33	7	78
Long plunkets, azures, blues, and long whites	29 to 32	6 ½	80
Sorting cloths with a blue ſelvedge	23 to 26	6	64
Fine ſhort *Suffolks*	23 to 26	6 ½	64
Handiwarps	29 to 32	7	76
Broad plunkets, azures, blues, and other broad coloured	26 to 28	6 ½	68
Coloured ſhort	23 to 25	6 ½	66
Half pieces of the ſame, called dozens, in proportion.			
Broad liſted whites and reds	26 to 28	6 ½	64
Narrow liſted whites	26 to 28	6 ½	61
Narrow liſted reds	26 to 28	6 ½	60
Fine cloth with plain liſts	29 to 32	6 ½	72
Cloths having ſtopt liſts	30 to 33	7	78
Broads called *Tauntons*, *Bridgewaters*, and *Dunſters*	12 to 13	7	30
Narrow, ditto	24 to 25	4	30
Half cloth in proportion.			
Devonſhire kerſeys, called dozens	12 to 13		13
Check kerſeys, ſtraights, and plain greys	17 to 18	4	24
Ordinary peniſtones, or foreſt whites	12 to 13	5 ½	28
Sorting peniſtones	13 to 14	6 ½	35
Kerſeys called waſhers, or waſh whites, half thicked	17 to 18		17
The ſame quarter thicked	18 to 19		17

Allowance in weight, for dying, dreſſing, rowing, and ſhearing, ſhall be made, in broad cloth four pounds, long cloth five pounds, and ſo in proportion. 4 *J. c.* 2. *ſ.* 13.

And no liquid ſhall be uſed for increaſe of weight, on pain of 40*s.* half to the king, and half to the buyer that ſhall ſue. *id. ſ.* 12.

Maker's ſeal. 5. And the maker, before ſale, ſhall ſet his ſeal of lead to the ſame, containing the length, and weight, to be tried by the water. 39 *El. c.* 20. *ſ.* 3.

Overſeer's ſeal. 6. And the overſeer ſhall fix a ſeal of lead to the cloth, containing the length and weight, with this word [ſearched]. 39 *El. c.* 20. *ſ.* 6.

And he ſhall, on the penalty of his recognizance, ſet his chriſtian and ſurname upon his ſeal; and no ſeal otherwiſe ſhall be good. 21 *J. c.* 18. *ſ.* 11.

And cloth, ſealed by the overſeers, ſhall not be again tried but by the buyer. 4 *J. c.* 2. *ſ.* 22.

And if they ſhall find any *falſe* ſeal or mark, or the cloths to be ſtretched, they ſhall preſent the defaults at the next ſeſſions. 39 *El. c.* 20. *ſ.* 5.

And if any perſon ſhall ſet any ſeal to cloth, or take any ſeal away without warrant; he ſhall, on conviction thereof at ſuch ſeſſions, for the firſt offence forfeit 10*l.* for the ſecond 20*l.* and the pillory: The ſaid forfeitures to be one third to the overſeers, one third to the king, and one third to the poor, as the ſeſſions ſhall appoint. 39 *El. c.* 20. *ſ.* 9.

Cloth ſold unſealed. 7. And if any cloth be offered to be ſold unſealed, the overſeers ſhall ſeize it, and preſent the ſame to the juſtices at the next ſeſſions. 39 *El. c.* 20. *ſ.* 4.

Cloths deficient in length, breadth, or weight. 8. And for every of the ſaid cloths abovenamed, which ſhall be of leſs length than the ſeal doth import, ſhall be forfeited 6*s.* 8*d.* a yard, beſides abatement of the price for what is wanting. 4 *J. c.* 2. *ſ.* 20.

For every yard of the ſaid cloths ſold, above the length, ſhall be forfeited 10*s.* *id. ſ.* 17.

For the ſame wanting breadth throughout, ſhall be forfeited 20*s.* wanting for half the length 10*s.* under half 5*s.* *id. ſ.* 19.

And for every pound wanting above two pounds in weight, ſhall be forfeited 10*s.* *id. ſ.* 18.

Diſtribution of forfeitures. 9. And by the 21 *J. c.* 18. *ſ.* 12. All penalties and forfeitures whatſoever, for want of length, breadth, and weight, by this or any former act, ſhall be diſtributed into three equal parts; one third to the overſeers and ſearchers finding and certifying the default, to be recovered by them

in

in ſeſſions, by action of debt, bill, plaint, or information, and two thirds to the poor, by diſtreſs.

10. Meaſure and weight of cloths by former acts, not altered by the 4 *J. c.* 2. ſeem to be as follows: Meaſure and weight of other cloths.

By the 3 *J. c.* 16. Ordinary kerſey ſhall not exceed 24 yards in length, and ſhall weigh one pound and three ounces a yard: Sorting kerſey ſhall not exceed 24 yards in length, and ſhall weigh one pound three ounces and a half a yard: On pain of 5 *s.* for every yard above, and 2 *s.* for every pound wanting (to be levied and diſtributed in like manner.)

By the 3 *J. c.* 17. No penalty ſhall be, for want of a ſeal on *Welſh* cottons; and they ſhall not be ſearched or tried but by the buyer.

By the 8 *El. c.* 12. Frizes and rugs ſhall be from 35 to 37 yards long, three quarters of a yard within a nail broad, and 44 pounds weight: (On pain of 20 *s.* for offending in length or breadth, by 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 25. And for every pound wanting, above four pounds, 5 *s.* by 4 & 5 *P. & M. c.* 5. *ſ.* 15.)

Moreover, by the 7 *J. c.* 16. Cogware, Kendals, coarſe cottons, and Carptmeals, made in *Cumberland*, *Weſtmorland*, or in *Carptmeale*, *Hawkeſhed*, and *Broughton in Lancaſhire*, whereof the dozen ſhall not exceed the price of 13 *s.* 4 *d.* ſhall not be ſearched nor ſealed, but may be made in ſuch ſort as may beſt pleaſe the buyer.

VIII. Concerning the dying of cloth.

1. For the encouragement of dreſſing and dying of cloth, no perſon ſhall export any white woollen broad cloth, until he have paid duty of 5 *s.* for every ſuch cloth; on pain of forfeiting the ſame, or the value thereof, half to the king, and half to him that ſhall ſeize, inform, or ſue. 6 *An. c.* 8.

2. No wool ſhall be boiled with gauls, bark of trees, or ſaw duſt, to be converted into broad cloth or kerſey; on pain of forfeiting the ſame, or the value thereof, half to king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

3. No perſon ſhall dye any wool to be converted into cloth, called ruſſets, muſters, marbles, greys, roys, and ſuch like colours, or into hats or caps; unleſs it be perfectly woaded, boiled, and maddered: on pain of 40 *s.* for ſo much thereof as will ſerve for the making of every ſuch cloth; half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of peace. And if the overſeer will not ſue in half a year,

year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5, 10, 11.

4. No perſon ſhall dye with braſel, to make a falſe colour in cloth or wool, hats, or caps; on pain of 20*s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 5.

5. No perſon ſhall dye any woollen cloths, as browns, blues, pewks, tawnies, or violets; except the ſame be perfectly boiled, greined, or maddered upon the woad, and ſhot with good cork or orchal; on pain of 20 *s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 4.

6. By the 13 *G. c.* 24. If any perſon ſhall dye any bays, or other woollen goods, for mather blacks, and not being dyed throughout with woad, indico, and mather only; he ſhall (being convicted thereof in 40 days) forfeit for every long *Bocking* bays containing 70 yards, 44*s.* *Colcheſter* or ſhort bays of 35 yards 22*s.* and ſo in proportion. If the penalty is above 5*l.* it ſhall be recovered in the courts at *Weſtminſter*; if under 5*l.* before two juſtices (not intereſted) by oath of one witneſs, half to the informer, and half to the company of dyers, if in *London*; if out of *London*, the whole to the informer and proſecutor. And if the penalties under 5*l.* are not paid in 20 days after conviction, then to be levied by the conſtable by warrant of ſuch juſtices by diſtreſs; for want of diſtreſs, to be committed to the houſe of correction, to be kept to hard labour not exceeding three months. But perſons aggrieved by the juſtices may appeal to the next ſeſſions, who may allow coſts. And the ſaid mathered blacks ſhall be marked with a red roſe and a blue roſe; and if any perſon counterfeit the ſame, he ſhall forfeit 4*l.* in like manner.

And if any perſon ſhall dye for *woaded* black any woollen goods, the ſame not being woaded, he ſhall forfeit in like manner for every cloth of 44 yards 40*s.* bays of 70 yards 30*s.* *Colcheſter* or ſhort bays of 35 yards 12*s.* perpetuana or ſtuffs 4*s.* and ſo in proportion. And the ſaid woaded blacks ſhall be marked with a blue roſe only: And if any perſon ſhall counterfeit the ſame, he ſhall forfeit 4*l.* in like manner.

And if any perſon ſhall uſe logwood in dying blue, he ſhall forfeit in like manner for cloth of 44 yards 40*s.* *Bocking* bays of 70 yards 22*s.* *Colcheſter* or ſhort bays of 35 yards 12*s.* perpetuana or ſtuff of 24 yards 4*s.* and for other woollen goods in proportion.

And the dyers within *London* ſhall be ſubject to the inſpection of the company;—out of the limits thereof, the quarter ſeſſions may appoint ſearchers; who may (with the conſtable's aſſiſtance) ſearch in the day time; and perſons refuſing ſuch ſearch ſhall forfeit 10*l.* in like manner.

IX. Concerning

IX. Concerning tenters, and the ſtretching of cloth.

1. No perſon ſhall have or uſe any tenter, with a lower bar, pin, ring, or other engine or device; any wrinch, ring head, growm, rope, or other engine, to ſtretch any rough and unwrought woollen cloth: on pain of 20*l.* half to the king, and half to him that ſhall ſue. 43 *El. c.* 10. *ſ.* 2. Tenter.

2. No perſon ſhall ſtretch (or ſell the ſame ſtretched) any wrought woollen broad cloth above one yard in length, and half a quarter in breadth; or half cloth above half a yard in length, and half a quarter in breadth; or kerſey, cotton, dozen, peniſtone, frize, rugg, above half a yard in length, and one nail in breadth; on pain of forfeiting the ſame, half to the overſeer or informer, and half to the poor. 43 *El. c.* 10. *ſ.* 3, 12. Stretching.

3. If any perſon ſhall feloniouſly cut and take, ſteal, or carry away, any cloth or other woollen manufacture from the rack or tenter in the night time, he ſhall be guilty of felony without benefit of clergy. 22 *C.* 2. *c.* 5. *ſ.* 3. Stealing off tenters.

But becauſe it is often difficult to prove the owner's property in the cloth, therefore by the 15 *G.* 2. *c.* 27. it is enacted, that if any cloth or woollen goods on the tenters, or woollen yarn or wool left out to dry, ſhall be ſtolen in the night, any juſtice on complaint made in ten days by the owner, may iſſue his warrant to any peace officer, in the day time to enter into, and ſearch the houſes, out-houſes, yards, gardens, or other places belonging to the houſes of every perſon whom ſuch owner ſhall upon his oath declare to ſuch juſtice he ſuſpects to have ſtolen, taken away, or received the ſame; and if the officer ſhall find any ſuch goods which from the oath of ſuch perſon he ſhall have reaſon to ſuſpect to be ſtolen, he ſhall apprehend the perſon in whoſe cuſtody or poſſeſſion the ſame ſhall be found, and carry him before a juſtice; and if he ſhall not give a ſatisfactory account how he came by the ſame, or in a convenient time to be ſet by the juſtice produce the the party of whom he had the ſame, or a credible witneſs to depoſe on oath his property therein, he ſhall be convicted of ſtealing ſuch goods; and ſhall for the firſt offence forfeit to the owner treble value, and in default of payment thereof in the time appointed by ſuch juſtice, he ſhall iſſue his warrant to levy the ſame by diſtreſs and ſale; and in default of diſtreſs, ſhall commit him to the common gaol where he ſhall be apprehended, for three months, or till paid; for the ſecond offence, treble value, and ſix months impriſonment;

impriſonment; for the third offence, ſuch juſtice ſhall commit him to the aſſizes, and if he ſhall be there convicted in like manner, he ſhall be guilty of felony, and tranſported for ſeven years. But perſons aggrieved (except on the third conviction) may appeal to the next general quarter ſeſſions, whoſe order therein ſhall be final. But nevertheleſs, this ſhall not alter any former law in force, for ſtealing or receiving ſuch cloth, or goods, except where the proof is laid on the offender.

X. Concerning the dreſſing of cloth.

1. No woollen cloth ſhall be exported, till it be barbed, rowed, and ſhorn; on pain of forfeiting the ſame, half to the king, and half to him that will ſue. 3 *H.* 7. *c.* 11.

2. No perſon ſhall uſe iron cards, or pickards, in rowing of cloth; on pain of forfeiting the cards, and 20*s.* half to the king, and half to the overſeer who ſhall diſcover and ſue in any court of record, or before the juſtices of the peace. And if the overſeer will not ſue in half a year, then the ſaid moiety to any other perſon who will ſue in another half year. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 7, 10, 11.

3. No perſon ſhall put any flocks, chalk, flour, or ſtarch, or other deceivable thing on cloth; on pain of 40*s.* in like manner. 3 & 4 *Ed.* 6. *c.* 2. *ſ.* 6.

4. There ſhall be no rowing or raiſing of cloth, with oil, greaſe, or any liquid, but only on the edge of the ſhears with ſemet or oils; on pain of 13*s.* 4*d.* half to the king, and half to the buyer that ſhall ſue. 4 *J.* *c.* 2. *ſ.* 10.

5. There ſhall be no cutting of wool from the backſides of cloth, but with ſhears only; on like pain of 13*s.* 4*d.* 4 *J.* *c.* 2. *ſ.* 11.

6. No liquid ſhall be uſed on the ſide of cloth, to make it look better than the midſt; on like pain of 13*s.* 4*d.* 4 *J.* *c.* 2. *ſ.* 12.

7. The ſides ſhall not be raiſed, fulled, rowed, or ſhorn, better than the middle; on like pain of 13*s.* 4*d.* 4 *J.* *c.* 2. *ſ.* 10.

8. No perſon ſhall preſs cloth with a hot preſs; on pain of forfeiting the ſame, or the value, half to the king, and half to him that ſhall ſue. 5 & 6 *Ed.* 6. *c.* 6. *ſ.* 52.

9. And preſſing of cloth with hot boards ſhall be puniſhed with like forfeiture, as preſſing it with a hot preſs. 21 *J.* *c.* 18. *ſ.* 11.

XI. Concerning

XI. Concerning mixed or medley broad cloth in particular.

It is provided by the 10 *An. c.* 16. and 1 *G. ſt.* 2. *c.* 15. that nothing therein ſhall extend to any cloth made in *Yorkſhire*; By which acts it is alſo further provided as follows: Mixed or medley broad cloth.

The fulling miller ſhall take an oath before a juſtice dwelling near ſuch mill, that he will well and truly perform the meaſuring all mixed or medley broad cloth fulled at his mill. Fulling miller to meaſure.

In order to which, he ſhall have a table 12 foot long, and three foot broad, whereon the cloth ſhall be doubled and laid plain, with the length of a yard marked thereon; on which he ſhall meaſure the ſame, when fulled and wet; and ſhall fix and rivet at the head end thereof, a ſeal of lead (to be furniſhed by the clothier), which ſhall be marked with a crown on the rivet: on which ſeal he ſhall ſtamp his name, and the length and breadth of the cloth; for which he ſhall have one penny. And ſeal.

He ſhall alſo enter in a book, the marks, ſort, number, length and breadth thereof. And enter the ſame.

And if he ſhall refuſe to take ſuch oath, or to fix ſuch ſeal, or to make ſuch entry; he ſhall, on conviction in 40 days, before one juſtice not intereſted, on oath of witneſs, forfeit 20 *l.* to the poor of the pariſh or place, charges of conviction firſt deducted. If not paid in 30 days after conviction, to be levied by diſtreſs. For want of diſtreſs, to be committed to gaol or houſe of correction, to be kept to hard labour for three kalendar months. Perſons aggrieved may appeal to the next ſeſſions, who may allow coſts.

And if any perſon ſhall take off, deface, counterfeit, or alter, ſuch ſeal, or add any other; he ſhall in like manner, forfeit 20 *l.* Counterfeiting the ſeal.

And no perſon ſhall expoſe to ſale any mixed or medley broad cloth, before it be ſo ſealed; on pain of forfeiting one ſixth part of the cloth, to the poor, in like manner: or, if it is in *London*, to the benefit of *Chriſt*'s hoſpital. Selling before ſealed.

If the buyer is not ſatisfied with the meaſure, he may have it meaſured again in the water, in eight days after delivery, giving two days notice to the ſeller or his factor: In which caſe, each party ſhall chuſe a meaſurer; and if thoſe two diſagree, they may chuſe a third: and if he ſhall refuſe, it ſhall be meaſured, if in *London* by the keeper of *Blackwell-hall*, who ſhall be ſworn before a juſtice to meaſure it truly: if not in *London*, then if the two meaſurers diſagree, Buyer may meaſure again.

diſagree, or appoint not a third perſon, the chief magiſtrate ſhall appoint and ſwear one.

But if the ſeller doth not then appear, or doth not then appoint a meaſurer, the keeper of *Blackwell-hall* ſhall proceed to meaſure it.

And the meaſurer ſhall be paid by the buyer 6 *d.* for each piece.

And he ſhall make a certificate of the true meaſure thereof.

And if on ſuch his meaſuring there appear a leſs quantity in length, or in the greateſt part of the breadth, than is mentioned in the ſeal, the owner or ſeller ſhall forfeit the ſixth part of the value of ſuch cloth; to be paid by the buyer, and deducted out of the price, on the meaſurer's making ſuch certificate, and making oath thereof before a juſtice, of which the juſtice ſhall give him a certificate. The ſame to be repaid by the fulling miller.

And the ſaid certificate ſhall in ten days be filed with the clerk of the peace, for which he ſhall have 1 *s.* which certificate ſo filed, ſhall be a ſufficient conviction. And an atteſted copy of ſuch certificate (for which the clerk of the peace ſhall likewiſe have 1 *s.*) ſhall be a ſufficient authority to the owner or ſeller, to demand of the milman the forfeitures deducted out of the price. Which if he ſhall refuſe to pay, it ſhall be levied by diſtreſs, by warrant of one juſtice; and for want of diſtreſs, to be committed to gaol or houſe of correction for three months.

Tenters. And by the 13 *G. c.* 23. Every owner of tenters for mixed or medley broad cloth, in the counties of *Glouceſter*, *Wilts*, and *Somerſet*, ſhall meaſure the tenter, and mark in figures the length of yards, beginning at number I, and ſo continuing to the end, upon the top bar, and on the foreſide thereof; on pain of 5 *l.* on conviction before two juſtices, on information on oath, in 3 months after the offence; to be levied by diſtreſs, half to the informer, and half to the poor: for want of diſtreſs, to be committed to gaol not exceeding three months, or until ſatisfaction be made.

Inſpectors. And the juſtices of the ſaid counties, at *Eaſter* ſeſſions yearly, ſhall chuſe inſpectors; who, before they enter upon their office, ſhall take this oath; *I* A. B. *do ſwear, that I will well and truly execute the office of an inſpector of mixed or medley woollen broad cloth within this county, according to the laws and ſtatutes of this realm, and according to the beſt of my ſkill and knowledge: So help me god.*

And they ſhall inſpect the mills, ſhops, houſes, and tenter grounds of perſons concerned in milling and manufacturing mixed or medley woollen broad cloth; and ſhall meaſure

meaſure the cloth on the tenter; and ſuch inſpector ſhall ſtamp his name on a lead ſeal, to be furniſhed by the maker of the cloth, and affix the ſame on the head end of ſuch cloth, and ſhall regiſter in a book the clothier's, milman's, or other perſon's name, and the number, length, and breadth, of every ſuch cloth; and ſhall at every quarter ſeſſions give in a copy of ſuch regiſter, with an account of forfeitures levied.

The milman ſending home ſuch cloth before inſpected, ſhall forfeit 40 *s.* in like manner.

Perſons refuſing entrance to the inſpector, ſhall forfeit 10 *l.* in like manner.

And the inſpector acting againſt his oath, ſhall forfeit 20 *l.* in like manner.

And the ſaid juſtices ſhall allow a ſalary to each inſpector, not exceeding 30 *l.* a year: for the raiſing of which, every maker ſhall pay to the inſpector 2 *d.* for every ſuch cloth, before they are ſent from the mill; who ſhall pay the ſame every 3 months or oftner, to the county treaſurer, to be applied by the ſeſſions towards ſuch ſalaries.

XII. Concerning the Yorkſhire *manufacture in particular.*

1. We come next to conſider the *Yorkſhire* manufacture, the great ſupport of the inhabitants of the barren mountains in the north, in taking off large quantities of their coarſe wool. During the late war, this manufacture did draw alſo much wool out of *Scotland*, which in times of peace finds ſome other vent; perhaps into *France*; which it cannot ſo well do, during a *French* war. So that contrary to the maxims of commerce, the northern counties flouriſh moſt in time of war; becauſe wool then may be ſold for near three times the price that it bears in time of peace. It were to be wiſhed, that ſome method might be found effectual, to preſerve unto us that valuable branch of the *Britiſh* commerce, and to prevent foreigners from foreſtalling us in that trade, of which we furniſh the neceſſary materials. Yorkſhire manufacture.

2. Divers acts of parliament have been obtained, at the expence of the clothiers, for the regulation and encouragement of this manufacture. Penalties.

Theſe acts are in all ſix: five of which relate to the ſame ſubject; each ſucceeding act explaining the former. And the other act ſtands alone by it ſelf.

The ſubſtance of the ſaid five acts, when brought together, ſeemeth to be as follows:

In

In the firſt place, as the puniſhments, and the methods of inflicting them, are not the ſame on the ſaid ſeveral acts, it is proper, in order to avoid frequent repetitions, to premiſe the ſeveral penalties on the ſeveral acts diſtinctly; that ſo, when the reader ſhall obſerve what act createth any of the following offences, he may by caſting his eye backward, ſee preſently the general method of proſecution upon that act. And, in the progreſs, where there is any particular puniſhment directed for any particular offence, it is thought proper to annex that puniſhment to that particular offence.

(1) 7 *An. c.* 13. The penalties on this act muſt be inflicted in 21 days after the offence is committed or diſcovered; on conviction before one juſtice (not being a dealer in the woollen manufacture) on the oath of one witneſs; if not paid in ſeven days, to be levied by the conſtable by warrant of diſtreſs from ſuch juſtice; and to be diſtributed, half to the informer, and half to the poor of the townſhip or place. For want of diſtreſs, to be committed to the houſe of correction or gaol, to be kept to hard labour not exceeding one month. But an appeal lies to the next ſeſſions, who may allow coſts. 7 *An. c.* 13. *ſ.* 5, 6, 8. 1 *G. ſt.* 2. *c.* 15. *ſ.* 16.

(2) 1 *G. ſt.* 2. *c.* 15. The ſame.

(3) 11 *G. c.* 24. Information of all offences on this act ſhall be given on oath in 20 days after the offence is diſcovered; and the conviction to be before one juſtice (not being a dealer in the woollen manufacture) on the oath of one witneſs (notice of the charge being firſt given to the party); If not paid in ten days after notice given of the conviction, at the offender's laſt place of abode, and he do not appeal, the ſame to be levied by the conſtable by warrant of diſtreſs from ſuch juſtice: To be diſtributed, half to the informer, and half to the poor. For want of diſtreſs, to be committed to the houſe of correction to be kept to hard labour for ſix months. But an appeal (on giving ten days notice to the informer) lies to the next ſeſſions, who may allow coſts. *ſ.* 18, 19.

(4) 7 *G.* 2. *c.* 25. All informations of offences on this act, ſhall be made in five days after diſcovery of the offence, and not otherwiſe. The conviction to be before one juſtice (not being a dealer in the woollen manufacture) on oath of one witneſs. If not paid in ten days after notice given of the conviction at the offender's laſt place of abode, and he do not appeal, the ſame to be levied by the conſtable, by warrant of diſtreſs from any ſuch juſtice: To be diſtributed, half to the informer, and half to the treaſurer towards the ſearchers ſalaries, and other expences

of carrying theſe acts into execution. For want of diſtreſs, to be committed to the houſe of correction to hard labour not exceeding one month. But an appeal (on giving ten days notice to the informer) lies to the next ſeſſions, who may allow coſts. 7 *G.* 2. *c.* 25. *ſ.* 2, 13, 16. 14 *G.* 2. *c.* 35. *ſ.* 11.

(5) 14 *G.* 2. *c.* 35. The ſame.

Maker's mark.

3. The clothier ſhall, at the time of making the cloth, weave or ſew into the head of it, in letters at length, his name and place of abode; on pain that if he ſhall offer the ſame to ſale ſo unmarked, he ſhall forfeit 5 *l.* for each piece. 11 *G.* 2. *c.* 24. *ſ.* 8.

And if any perſon ſhall counterfeit or alter ſuch mark, before it is ſold; the offender, and alſo the perſon in whoſe cuſtody it is found, ſhall forfeit 5 *l.* *id.*

Fulling.

4. The fulling miller ſhall not full in one ſtock at one time, more than one whole broad cloth; on pain of 20 *s.* 7 *An.* *c.* 13. *ſ.* 4.

Fulling miller to meaſure and ſeal.

5. And every perſon within 14 days after he is employed in the office of a fulling miller, ſhall make oath before a juſtice, that he will well and truly perform the meaſuring and ſtamping of the cloth fulled at his mill: which juſtice ſhall give him a certificate of ſuch oath being taken. Which if he ſhall omit to do, he ſhall forfeit 5 *l.* 14 *G.* 2. *c.* 35. *ſ.* 5. 11 *G.* *c.* 24. *ſ.* 4.

Searchers to be appointed.

6. And moreover, the juſtices (not being dealers in woollen cloth) may at *Eaſter* ſeſſions yearly, appoint other perſons to be meaſurers or ſearchers at the ſaid mills, who follow or have been brought up there in making or dreſſing woollen broad cloth; and may appoint them ſalaries, not exceeding 25 *l.* a year. And on ſuch ſearcher's death, or incapacity, one ſuch juſtice, dwelling near, may appoint another till *Eaſter* ſeſſions, to be there confirmed, or another appointed. 14 *G.* 2. *c.* 35. *ſ.* 1, 2.

Searcher's oath.

7. Which ſaid meaſurer or ſearcher ſhall make the like oath before a juſtice, that he will well and truly perform the meaſuring and ſtamping of the ſaid cloth: which juſtice ſhall give him a certificate of ſuch oath being taken. 14 *G.* 2. *c.* 35. *ſ.* 5.

Searcher to meaſure.

8. The ſaid meaſurer or ſearcher, ſo ſtationed at the fulling mill, ſhall together with the ſaid milman, meaſure all the whole cloths and ends there milled, ſuch as are ſtreamed or waſhed in the goit or mill ſtream, within ſix, and not ſooner than four hours after; ſuch as are not ſtreamed and waſhed, ſhall be meaſured in four hours after they come out of the ſtock. 14 *G.* 2. *c.* 35. *ſ.* 3.

Length and breadth.

9. And the length and breadth thereof ſhall be as follows: Every woollen broad cloth, whether it be an end

or half cloth, or a long or whole cloth, being well ſcoured and fully milled, ſhall be five quarters and an half broad within the liſts, in the water, being fully wet; and the half cloth ſhall be not above 24 yards long, and the whole cloth not above 48 yards long. 11 *G. c.* 24. *ſ.* 1.

And if any whole or half cloth ſhall, when milled, and having ſo laid four hours, be under one yard and 13 ½ inches broad, for above one fifth part of the length thereof; the maker ſhall forfeit for the firſt inch 2*s.* 6*d.* for the ſecond 5*s.* and for every other inch 15*s.* half to the informer, and half to the treaſurer, charges of proſecution and conviction firſt deducted. 14 *G.* 2. *c.* 35. *ſ.* 8.

And whole thick kerſeys, whole thick plains, huggabags, or broken quilled kerſeys, ſhall be not under 18 yards long, and 3 ½ quarters broad, when wet: on pain that the perſon offering the ſame to ſale contrary hereto, ſhall forfeit for every inch wanting in breadth, and every half yard wanting in length 20*s.* 1 *G. ſt.* 2. *c.* 15. *ſ.* 15.

Sealing after it is meaſured.

10. And the milman ſhall affix a ſeal (to be furniſhed by the clothier) at one end; and the meaſurer another at the other end; and ſhall rivet the ſame; and ſhall each ſtamp his name, or part of it, on the ſeal or rivet, and the length and breadth in figures. 14 *G.* 2. *c.* 35. *ſ.* 6.

Penalty of taking away before meaſuring and ſealing.

11. And if the maker take away his cloth from the mill, before it be meaſured and ſtamped, he ſhall, on conviction on the oath of ſuch milman, or meaſurer, forfeit 20*s.* 14 *G.* 2. *c.* 35. *ſ.* 4.

Or if he offer the ſame to ſale unſealed, he ſhall forfeit 5*l.* for each piece. 11 *G. c.* 24. *ſ.* 8.

Entry to be made after meaſuring and ſealing.

12. And immediately, the ſearcher ſhall enter in a book to be provided by the treaſurer, and kept at the mill, the maker's name and dwelling, the colour, ſort, length, and breadth. 14 *G.* 2. *c.* 35. *ſ.* 6.

Pay for meaſuring and ſealing.

13. For which meaſuring and ſealing, the owner ſhall pay to the milman 4*d.* for every whole or long cloth, and 2*d.* for every end or half cloth; three fourths to go to the treaſurer towards the ſearchers ſalaries and other uſes of the acts, and one fourth to the milman. 14 *G.* 2. *c.* 35. *ſ.* 6.

And when the expences of the acts ſhall be diſcharged, the juſtices in *Eaſter* ſeſſions may make order for increaſing or diminiſhing the duties for meaſuring and ſealing; ſo as they never exceed 4*d.* for a whole, and 2*d.* for a half cloth. *id. ſ.* 19.

Penalty on the ſailing miller.

14. Generally, the fulling miller omitting his duty, ſhall forfeit 5*l.* 11 *G.* 2. *c.* 24. *ſ.* 5.

On counterfeiting the ſeal.

15. And if any perſon ſhall counterfeit or alter the ſeal, he ſhall forfeit 5*l.* 11 *G. c.* 24. *ſ.* 4.

16. If the owner ſhall, in four hours after the cloth is brought home, find on meaſuring the ſame, that it is of leſs length, or of leſs breadth, for above one fifth part of the length, than is expreſſed by the ſtamp, and ſhall, before it is offered to ſale, make oath thereof before ſuch juſtice; then the milman and ſearcher, being convicted by ſuch oath, ſhall jointly forfeit for the firſt inch in breadth or half yard in length falling ſhort of the ſtamp 5 *s.* and for every other inch in breadth and half yard in length 10 *s.* half to the informer, and half to the treaſurer (charges of proſecution firſt deducted). And the treaſurer may deduct the meaſurer's penalty out of his ſalary. 14 *G.* 2. *c.* 35. *ſ.* 11, 12. On wrong meaſuring.

17. And the juſtices (not dealing in cloth) ſhall at *Eaſter* ſeſſions yearly, appoint other ſearchers, who follow or have been brought up there in the trade of making or dreſſing woollen broad cloth; and allow each a ſalary not exceeding 15 *l.* a year; who ſhall make oath, that they will well and truly execute the office of ſearchers of broad woollen cloth, according to the laws of the realm, and to the beſt of their knowledge. 11 *G.* *c.* 24. *ſ.* 12. 7 *G.* 2. *c.* 25. *ſ.* 14. Other ſearchers to be choſen.

18. And they may ſearch (more eſpecially when required under the hand of any ſuch juſtice), and meaſure ſuſpected cloth; and perſons hindring, ſhall forfeit 10 *l.* 11 *G.* *c.* 24. *ſ.* 13. Who ſhall ſearch and meaſure.

But they ſhall not ſearch cloth packed for exportation, provided the merchant or packer ſhall ſwear before a juſtice, that it was, when demanded to be produced, dreſſed or packed up to be ſent away. 14 *G.* 2. *c.* 35. *ſ.* 15.

And if ſuch ſearcher act againſt his oath, he ſhall forfeit 20 *l.* 11 *G.* *c.* 24. *ſ.* 14.

19. And if any buyer ſhall ſuſpect the cloth to want length or breadth, he may in 14 days after delivery, put it in water four hours, and cauſe it to be meaſured by a ſworn ſearcher; and if found leſs in length or breadth than is marked on the ſeals, the ſeller ſhall forfeit 20 *s.* 7 *G.* 2. *c.* 25. *ſ.* 2. Buyer may meaſure again.

But it is provided afterwards in the ſame act, that no more than 10 *s.* ſhall be forfeited for the firſt inch wanting in breadth, and 15 *s.* for the ſecond, and 20 *s.* for every other inch. *ſ.* 4.

And that white broads ſhall not forfeit for want of breadth, after put in hot water or other liquors to be dyed. *ſ.* 5.

20. And the offender may, in five days after notice of the offence, view the cloth; and if the buyer refuſe, the proſecution ſhall ceaſe. 7 *G.* 2. *c.* 25. *ſ.* 3. Seller may view it.

Milman to anſwer over for wrong meaſure.

21. And by a former act it is provided, that the ſeller's penalty ſhall be repaid by the milman; and on refuſal, to be levied by diſtreſs; and that the buyer may in three days return it to the ſeller, who ſhall pay back the price and charges (to be aſcertained on oath before a juſtice); and on refuſal, to be diſtrained of. 11 *G. c.* 24. *ſ.* 5, 7.

Cloths damaged to be meaſured again.

22. Cloths damaged and ſhortned by accident, ſhall by a ſearcher be meaſured and ſealed again. 14 *G.* 2. *c.* 35. *ſ.* 10.

Tenters.

23. The owners of tenters ſhall mark, on the foreſide of the top bar, in figures, the length of yards on each tenter; beginning with number 1, and ſo on; on pain of 5 *l.* 11 *G. c.* 24. *ſ.* 11.

Stretching.

24. And if any perſon ſhall ſtretch any ſuch cloth more than one yard in 20 in length, or more than one inch in a quarter of a yard in breadth, and ſo in proportion, beyond the meaſure on the ſeal; he ſhall forfeit 20 *s.* for every half yard in length, and inch in breadth. 7 *G.* 2. *c.* 25. *ſ.* 12.

Cards in dreſſing.

25. Cards with wire or other metal ſhall not be uſed in dreſſing cloth, on pain of 50 *l.* 11 *G. c.* 24. *ſ.* 18.

Stretching in dreſſing.

26. And the cloth dreſſer ſtretching the merchant's cloth, or altering the ſeals, ſhall repay to him the penalties. 11 *G. c.* 24. *ſ.* 16.

Dreſſer's ſtamp.

27. And he ſhall dreſs the ſame in all parts alike; and ſhall at the head end affix and rivet a ſeal of lead, and ſtamp thereon his name at length; on pain of 5 *l.* 11 *G. c.* 24. *ſ.* 10.

What hath been ſaid may ſuffice for a general view of ſo perplexed a matter, as muſt be neceſſarily ſuppoſed in five pretty long acts of parliament, all unrepealed, and every ſubſequent act explaining and altering the former: A more exact knowledge of any particular, muſt be laboured for in the acts themſelves.

The act which ſtands alone, is concerning narrow woollen cloths only, not being white kerſeys, nor half thicks; and is as follows:

Narrows.

28. The juſtices in *Eaſter* ſeſſions yearly ſhall appoint ſearchers, ſuch as have ſerved apprenticeſhips to the trade of making narrow cloth, or have exerciſed ſuch trade three years; and appoint them ſalaries: Who ſhall be ſworn before a juſtice, well and truly to execute the office of ſearching ſuch narrow woollen cloth. And in caſe of the death or ſickneſs or other diſability of a ſearcher; one juſtice, living near, may appoint another till the next ſeſſions, to be there confirmed, or another appointed. 11 *G.* 2. *c.* 28. *ſ.* 3, 4.

Which

Which ſaid cloth may be made of what length and breadth the maker ſhall think fit. *ſ.* 13.

And he ſhall weave or ſet in the head of every piece, the firſt letters of his name; on pain, on conviction in one month, of forfeiting 20*s.* *ſ.* 1.

And the ſame ſhall be meaſured when wet at the mill, both by the milman and the ſearcher, who ſhall meaſure it down the middle for the length, and within the liſts for the breadth. *ſ.* 1.

And the milman ſhall rivet at one end a ſeal of lead, to be furniſhed by the clothier, and ſhall ſtamp his name thereon at length, and the length and breadth in figures: And the ſearcher ſhall alſo affix a ſeal of lead at the other end, with his name, with the length and breadth in like manner. *ſ.* 1.

And they both ſhall keep books, wherein they ſhall enter the day and year when milled, the name and place of abode of the owner, and the length and breadth; and ſhall ſuffer the buyer to inſpect the ſame. *ſ.* 1.

The miller, or ſearcher offending herein, ſhall, on conviction in eight days after the cloth is removed from the mill, forfeit 5*l.* *ſ.* 1, 2.

And if any perſon ſhall counterfeit the ſeal or mark, he ſhall (on conviction in one month) forfeit 40*s.* *ſ.* 7.

And a ſum not exceeding 3*d.* for each cloth, ſhall be paid by the owner before it is carried from the mill, to ſuch perſon as the juſtices at *Eaſter* ſeſſions ſhall appoint, to pay the ſearchers ſalaries, and other expences of the act: And the perſon ſo appointed may detain the cloth at the mill till paid; and if not paid in eight days after demand, ſuch perſon may ſell the ſame, and detain the money, rendring the overplus on demand. *ſ.* 8, 9.

And the owner ſhall meaſure the cloth when brought from the mill, before it is ſet on the tenter; and if it is leſs than the ſtamp, or by lying wet is become leſs, he ſhall carry it to the milman and ſearcher to be reſtamped, on pain of 5*s.* on conviction in one month after the offence. *ſ.* 5.

The owner may ſtretch the ſame one inch in a yard in length, and two inches in every three quarters in breadth, and ſo in proportion: but if any perſon ſtretch it further, he ſhall forfeit for the firſt half yard in length, or firſt inch in breadth overſtretched 10*s.* and for every other half yard in length, or half inch in breadth 20*s.* *ſ.* 6.

The conviction to be before one juſtice, not being a dealer in cloth, on oath of one witneſs, reaſonable notice being firſt given to the perſon accuſed. *ſ.* 10.

The forfeitures (if not paid in ten days after notice of the conviction given at the offender's laſt place of abode, and if he ſhall not appeal) to be levied by the conſtable by warrant of a juſtice by diſtreſs, rendring the overplus on demand, charges of diſtreſs and ſale being firſt deducted: To be diſtributed (after deducting the charges of conviction) half to the informer, and half to the treaſurer for the expences of carrying the act into execution: For want of diſtreſs, to be committed to the houſe of correction to hard labour for one month. *ſ.* 10.

Perſons aggrieved may appeal to the next quarter ſeſſions to be held after 14 days from the conviction, giving ten days notice to the informer. And the juſtices there, may award coſts. *ſ.* 12.

XIII. Concerning burying of the dead in woollen cloth.

1. By the 30 *C.* 2. *c.* 3. (which is required to be given in charge at the aſſizes and ſeſſions) no corps of any perſon (except thoſe who ſhall die of the plague) ſhall be buried in any ſhirt, ſhift, ſheet, or ſhroud, or any thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or in any ſtuff or thing, other than what is made of ſheep's wool only, or be put into any coffin lined or faced with any ſort of cloth or ſtuff, or any other thing whatſoever, that is made of any material, but ſheep's wool only. *ſ.* 3, 9, 10.

2. And the miniſters ſhall take an exact account, and keep a regiſter book, to be provided at the charge of the pariſh, and make a true entry therein of all perſons buried in their reſpective pariſhes or precincts, or in ſuch common burial places as their reſpective pariſhioners are uſually buried. *ſ.* 4, 7.

3. Within eight days after the interment, ſome relation of the party deceaſed, or other credible perſon, ſhall cauſe an affidavit (A) in writing to be made under the hands and ſeals of two or more credible witneſſes, ſetting forth that ſuch deceaſed perſon was not put in, wrapt, or wound up, or buried, in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or any other material but ſheep's wool only: And ſhall bring the ſame, and make oath thereof, before the mayor, or a juſtice of the peace, or maſter of chancery [and if no juſtice ſhall reſide or be to be found in the

the pariſh where the party is interred, then to any parſon, vicar, or curate, in any other pariſh within the county, 32 *C.* 2. *c.* 1.] who ſhall adminiſter the oath, and atteſt the ſame under their hands upon ſuch affidavit, *gratis*. *ſ.* 4, 5.

4. And ſhall (within eight days as aforeſaid) bring the ſame ſo ſigned and atteſted, to the miniſter; who ſhall enter the ſame in the regiſter. *ſ.* 4, 7.

5. And if no relation of the party buried, or other perſon, ſhall bring ſuch affidavit, as aforeſaid, Then the goods and chattels of the party deceaſed ſhall be liable to the forfeiture of 5 *l.* to be levied by diſtreſs, by warrant of the chief magiſtrate in any town corporate, or of any juſtice of the peace: Or in default thereof, by like diſtreſs of the goods of the perſon in whoſe houſe the party died; or of any that had a hand in putting ſuch perſon into any ſhirt, ſhift, ſheet, ſhroud, or coffin, or did order or diſpoſe the doing thereof; and in caſe ſuch perſon were a ſervant and died in the family of his or her maſter or miſtreſs, the ſame ſhall be levied on the goods of ſuch maſter or miſtreſs; and if ſuch perſon died in the family of his or her father or mother, then the ſame ſhall be levied on the goods of his or her father or mother: Which ſaid forfeiture ſhall be levied, paid, and allowed out of the eſtate of the ſaid deceaſed perſon, before any ſtatute, judgment, debt, legacy, or other duty whatſoever. *ſ.* 4.

6. And in ſuch caſe, where no affidavit ſhall be brought in eight days as aforeſaid, to the miniſter where the party was buried, he ſhall forthwith give, or cauſe notice (B) thereof to be given in writing under his hand, to the churchwardens or overſeers; on pain of 5 *l.* with full coſts (provided the ſuit be commenced in ſix months), one fourth to the king, two fourths to the poor where ſuch perſon offending dwells, and one fourth to him that ſhall inform and ſue. *ſ.* 5, 6.

And moreover, where no ſuch affidavit ſhall be brought to him within ſuch time, he ſhall enter a memorial thereof in the ſaid regiſtry, againſt the name of the party interred, and of the time when he certified the ſame to the churchwardens or overſeers. *ſ.* 7.

7. The ſaid churchwardens or overſeers ſhall within eight days after ſuch notice (on like pain as the miniſter) repair to the chief magiſtrate, if ſuch party was buried in a town corporate, or elſe to a juſtice of the peace: Which ſaid juſtice or magiſtrate, on certificate from ſuch miniſter, ſhall (on the like pain) forthwith grant a warrant (C) for the levying of the ſaid forfeiture on the goods of the parties before mentioned, rendring the overplus all reaſonable

charges being firſt deducted; half of which ſhall be to the poor, and half to the informer. *ſ.* 5.

8. And when the overſeers ſhall account, they ſhall give an account of the name and quality of every perſon interred within their pariſh from the time of their former account, and of ſuch certificate as came to their hands from ſuch miniſter, and of their levying the penalties, and of their diſpoſal thereof; on pain of 5*l.* to be levied by diſtreſs, by warrant of the juſtices, or two of them, to whom they ſhall account. And no overſeers account ſhall be allowed, until they ſhall have therein accounted for the burials as aforeſaid. *ſ.* 8.

XIV. Againſt importation of woollen cloth.

No foreign woollen cloth ſhall be imported, on pain of forfeiture, and further puniſhment at the king's will. 11 *Ed.* 3. *c.* 3. 4 *Ed.* 4. *c.* 1. *ſ.* 7.

XV. Encouragement of the exportation of woollen manufactures.

Woollen manufactures ſhall be exported cuſtom free. 11 & 12 *W.* *c.* 20.

A. Affidavit for burying in woollen.

Weſtmorland. BE *it remembred, that on the* ——— *day of* ——— A. W. *of* ——— *yeoman, and* B. W. *of* ——— *yeoman, being two credible perſons, do make oath, That* A. D. *late of* ——— *in the pariſh of* ——— *in the county aforeſaid, on the* ——— *day of this preſent month of* ——— *was not put in, wrapt or wound up, or buried in any ſhirt, ſhift, ſheet, or ſhroud, made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or other than what is made of ſheep's wool only, or in any coffin lined or faced with any cloth, ſtuff, or any other thing whatſoever made or mingled with flax, hemp, ſilk, hair, gold, or ſilver, or any other material but ſheeps wool only.*

A. W.
B. W.

Sworn before me, being one of his majeſty's juſtices of the peace for the ſaid county [or, *vicar of* ——— *in the ſaid county, there being no juſtice of the peace reſiding (or to be found) in the ſaid pariſh of* ———] *the day and year aboveſaid;*

J. P.

B. The

B. The miniſter's notice of affidavit of burying in woollen not being brought.

Weſtmorland. { To the churchwardens and overſeers of the poor of the pariſh of ——— in the ſaid county.

I A. M. *miniſter of the pariſh of* ——— *aforeſaid, in the county aforeſaid, do hereby give you notice, that on the* ——— *day of* ——— *the body of* A. D. *was buried within the ſaid pariſh, and that no perſon whatſoever hath brought to me any affidavit purſuant to the ſtatute made for burying in woollen. Witneſs my hand the* ——— *day of* ———.

C. Warrant to levy the penalty for not burying in woollen.

Weſtmorland. { To the conſtable of ———.

WHEREAS *it duly appears to me* ——— *one of his majeſty's juſtices of the peace for the ſaid county, that* A. D. *late of* ——— *deceaſed, on the* ——— *day of* ——— *was buried within the pariſh of* ——— *in the county aforeſaid, and that no affidavit hath been brought within eight days afterwards to the miniſter of the ſaid pariſh that the ſaid* A. D. *was buried in no other materials but ſheep's wool only, purſuant to the ſtatute in that caſe made;* [*and whereas it alſo duly appeareth unto me, that he the ſaid* A. D. *had no goods and chattels at the time of his death as aforeſaid, and that he the ſaid* A. D. *did die in the houſe of* A. O. *of* ——— *yeoman, at* ——— *aforeſaid, in the county aforeſaid;* Or, *that* A. O. *of* ——— *yeoman, had a hand in, or did order and diſpoſe, the putting the ſaid* A. D. *deceaſed in a ſhirt, ſhift, ſheet, ſhroud, or coffin, contrary to the form of the ſtatute aforeſaid;* or, *that* A. M. *of* ——— *yeoman, at the time of the death of him the ſaid* A. D. *was maſter of him the ſaid* A. D. *and that he the ſaid* A. D. *ſervant to the ſaid* A. M. *did die in the houſe of him the ſaid* A. M. *at* ——— *aforeſaid;* or, *that* A. F. *of* ——— *yeoman, was father to the ſaid* A. D. *and that he the ſaid* A. D. *did die in the family of him the ſaid* A. F.] *Theſe are therefore to command you forthwith to levy the ſum of* 5 l. *by diſtreſs and ſale of the goods and chattels which he the ſaid* A. D. *had at the time of his death* [Or, *of the goods and chattels of him the ſaid* A. O.] *rendring the overplus to* ——— *your reaſonable charges being firſt deducted: One moiety of which ſaid ſum of* 5 l. *you ſhall*

ſhall pay to the overſeers for the uſe of the poor of the ſaid pariſh where he the ſaid A. D. *was buried, and the other moiety to* A. I. *of* ——— *yeoman, who informed me of the ſaid offence, and did ſue for the ſaid forfeiture. Herein fail you not. Given under my hand and ſeal at* ——— *in the county aforeſaid, the* ——— *day of* ——— *in the* ——— *year of the reign of* ———.

Wreck.

Wreck, what.

1. WRECK of the ſea, in legal underſtanding, is applied to ſuch goods, as after ſhipwreck at ſea, are by the ſea caſt upon the land; and therefore the juriſdiction thereof pertaineth not to the lord admiral, but to the common law. 2 *Inſt.* 167.

Jetſam, flotſam, & lagan.

2. None of thoſe goods which are called *jetſam* (from being *caſt* into the ſea while the ſhip is in danger, and after periſheth) or thoſe called *flotſam* (from *floating* upon the ſea after ſhipwreck) or thoſe called *lagan* or *ligan* (goods thrown overboard before the ſhipwreck, which ſink to the bottom of the ſea) are to be eſteemed wreck, ſo long as they remain upon the ſea, and are not caſt upon the land by the ſea; but if any of them are caſt upon the land by the ſea, they are wreck. *Wood b.* 2. *c.* 2.

Living creature eſcaping.

3. Alſo, by the 3 *Ed.* 1. *c.* 4. *Where a man, a dog, or a cat eſcape quick out of the ſhip, the ſhip or any thing therein ſhall not be adjudged wreck of the ſea.*

A man, a dog, or a cat] Which ſtatute being but declaratory of the common law, theſe three inſtances are only put for examples; for beſides theſe two kinds of beaſts, all other beaſts, fowls, and other living things are underſtood, whereby the property of the goods may be known. 2 *Inſt.* 167, 168.

Eſcape quick out of the ſhip] If a ſhip be ready to periſh, and all the men therein (for the ſafeguard of their lives) leave the ſhip, and after, the forſaken ſhip periſheth; if any of the men be ſaved and come to land, the goods are not loſt. 2 *Inſt.* 167.

To whom the wreck belongeth.

4. By the 17 *Ed.* 2. *The king ſhall have wreck of the ſea throughout the realm.*

And the cauſe wherefore originally wreck was given to the crown, ſtood upon two main maxims of the common law. 1. That the property of all goods whatſoever muſt be in ſome perſon. 2. That ſuch goods as no ſubject can

claim

claim any property in, do belong to the king by his prerogative. 2 *Inſt.* 167.

5. The taking of goods whereof no one had a property at the time, is not felony; and therefore he who takes away a wreck, before it is ſeized by the perſon who has a right thereto, is not guilty of felony, and ſhall only be puniſhed by fine, or the like. 1 *Haw.* 93, 94. That is to ſay, he is not guilty of felony by the common law; but it is otherwiſe by the ſtatutes here following. Seizing wreck not felony.

6. To preſerve ſhips ſtranded, or in diſtreſs, from being plundered by the country people, it is enacted by the 12 *An. ſt.* 2. *c.* 18. and the 26 *G.* 2. *c.* 19. as follows: (Which ſaid act of the 12 *An.* is required to be read in the church four times a year, in all ſea port towns, and on the coaſt.) Aſſiſting ſhips in diſtreſs.

The juſtice of the peace, mayor, bailiff, collector of the cuſtoms, or chief conſtable, who ſhall be neareſt to where any ſhip ſhall be ſtranded or caſt away, ſhall forthwith give publick notice for a meeting to be held as ſoon as poſſible, of the ſheriff or his deputy, the juſtices of the peace, mayors, coroners, and commiſſioners of the land tax, or any five of them, who ſhall employ proper perſons for ſaving the ſame; and ſhall command the conſtables neareſt to the ſea coaſts, to call together as many men as ſhall be thought neceſſary, to aſſiſt. And alſo the officers of exciſe ſhall be proper officers to put theſe acts in execution. And within the cinque ports, the lord warden of the cinque ports, the lieutenant of *Dover caſtle*, the deputy warden of the cinque ports, the judge official, and commiſſary of the court of admiralty of the cinque ports, ſhall put the ſame in execution there.

And any juſtice of the peace, in the abſence of the high ſheriff, may take ſufficient power of the county.

And they may command all ſhips at anchor near, to aſſiſt; and if the officer of ſuch ſhip ſhall refuſe or neglect, he ſhall forfeit 100*l.* with coſts, to the officer of the ſhip in diſtreſs.

And to prevent confuſion, and contradictory orders, the perſons aſſembled to ſave any veſſel or goods as aforeſaid, ſhall conform in the firſt place to the orders of the maſter or other officer or owner, or perſons employed by them; and for want of their preſence or directions, then to the orders of the officers of the cuſtoms, next to thoſe of the officers of exciſe, then of the ſheriff or his deputy, then of a juſtice of the peace, then of a mayor, then of the coroner, then of a commiſſioner of the land tax, then of a chief conſtable, then of a petty conſtable; and any perſon acting contrary to ſuch orders, ſhall forfeit not exceeding

5*l.*

5 *l.* to be levied by warrant of one juſtice, and in caſe of non-payment, to be committed to the houſe of correction, not exceeding three months.

And every ſuch ſheriff, juſtice, mayor, coroner, lord of a manor, under ſheriff, or commiſſioner of the land tax, ſhall have 4 *s.* a day during his attendance, out of the goods ſaved.

And if any perſon, not impowered as above, ſhall endeavour to enter on board ſuch veſſel, or ſhall deface the marks of the goods; he ſhall within 20 days make double ſatisfaction to the party grieved, at the diſcretion of the two next juſtices; or in default thereof, ſhall be ſent by them to the next houſe of correction, to be kept to hard labour for 12 months.

And if any perſons not employed by the maſter or owner, ſhall in the abſence of perſons employed by them, ſave any veſſel or goods, and cauſe them to be carried for the benefit of the owners into port, or any near adjoining cuſtom houſe, or place of ſafe cuſtody, immediately giving notice thereof to a juſtice, magiſtrate, cuſtom houſe or exciſe officer; they ſhall be intitled to a reaſonable reward for the ſame, to be adjuſted by three neighbouring juſtices, which may be recovered by action at law: Or the ſame may be adjuſted by the officers abovementioned. And if the ſaid ſalvage (and the charges of 4 *s.* a day as abovementioned) ſhall not be paid in 40 days after the ſervices performed, the officer of the cuſtoms concerned in the ſalvage, may borrow or raiſe ſo much money as ſhall pay the ſame, upon a bill or bills of ſale, under his hand and ſeal, of the veſſel, or cargo, or part thereof; redeemable nevertheleſs on payment of the principal, and intereſt at 4 *per cent.*

And more generally, by another clauſe it is enacted, that all perſons who ſhall act or be employed in preſerving any ſuch veſſel or cargo, ſhall be paid a reaſonable ſalvage, to be adjuſted by three neighbouring juſtices as abovementioned.

And if any perſon ſhall be aſſaulted, beaten, and wounded, in the exerciſe of his duty in the ſalvage of any veſſel or goods, the offender, on conviction by indictment at the aſſizes or ſeſſions, ſhall be tranſported for ſeven years. And ſuch perſons moleſting the preſervation of the ſhip may be repelled by force.

And if any perſon ſhall plunder, ſteal, take away, or deſtroy any goods belonging to ſuch ſhip in diſtreſs, or which ſhall be wrecked or ſtranded (whether any living creature be on board or not) or any tackle, proviſion, or part of ſuch ſhip; or ſhall beat or wound, with intent to kill,

kill, or otherwiſe wilfully obſtruct the eſcape of any perſon endeavouring to ſave his life from ſuch ſhip, or the wreck thereof; or ſhall put out any falſe light, with intent to bring any veſſel into danger; he ſhall be guilty of felony without benefit of clergy. Provided that when goods of ſmall value ſhall be ſtranded or caſt on ſhore, and ſtolen without circumſtances of cruelty, outrage, or violence; the offenders may be proſecuted for petit larceny only.

And if any perſon ſhall make any hole in any ſuch ſhip in diſtreſs, or ſteal any pump belonging thereto, or wilfully do any thing tending to the immediate loſs of ſuch ſhip, he ſhall be guilty of felony without benefit of clergy.

And if oath be made before a magiſtrate, of any ſuch plunder or theft, or of the breaking of any ſuch ſhip, and the examination in writing thereupon taken be delivered to the clerk of the peace, he ſhall cauſe the offender to be forthwith proſecuted for the ſame, either in the county where the fact ſhall be committed, or in any county next adjoining, in which adjoining county any indictment may be laid by any other proſecutor; and if the fact be committed in *Wales*, then the proſecution ſhall or may be carried on in the next adjoining *Engliſh* county; and the neceſſary charges of ſuch proſecution ſhall be paid by the treaſurer of the county where the fact ſhall be committed, as the juſtices in ſeſſions ſhall order: and if the clerk of the peace ſhall neglect his duty herein, he ſhall forfeit 100 *l.* to him who ſhall ſue.

And one juſtice, upon information on oath, of any part of the cargo or effects of any veſſel loſt or ſtranded near the coaſts, being unlawfully conveyed or concealed, or of ſome reaſonable cauſe of ſuſpicion thereof, may iſſue his warrant for ſearching as in other caſes of ſtolen goods: And if the ſame be found in any houſe or other place, or in the poſſeſſion of any perſon not legally authoriſed to have the ſame; and the owner or occupier, or perſon in whoſe poſſeſſion the ſame ſhall be found, ſhall not immediately upon demand deliver the ſame; ſuch juſtice, on proof of ſuch refuſal, ſhall commit him to the common gaol for ſix months, or till he ſhall have paid treble value thereof.

And if any perſon ſhall offer to ſale any ſuch goods unlawfully taken away, or reaſonably ſuſpected ſo to have been, the perſon to whom they are offered, or any officer of the cuſtoms or exciſe, or conſtable, may ſeize the ſame; and ſhall, with all convenient ſpeed, carry the ſame, or give notice thereof, to one juſtice; and if ſuch perſon ſhall not in ten days make out his property therein, to the ſatisfaction of the juſtice, they ſhall be delivered over to the

rightful owner, on payment of a reaſonable reward (to be aſcertained by the juſtice) to the ſeizor; and the juſtice may commit ſuch offender to the common gaol for ſix months, or till he ſhall have paid treble value. And if any perſon ſhall diſcover to any juſtice, magiſtrate, cuſtom houſe or exciſe officer, where any ſuch goods are wrongfully bought, ſold, or concealed, he ſhall be intitled to a reaſonable reward, to be adjuſted as the ſalvage.

And the officer of the cuſtoms who ſhall act in preſerving any veſſel or cargo, ſhall, as ſoon as conveniently may be, cauſe or procure all perſons belonging to the veſſel, and others who can give an account thereof, to be examined on oath before a juſtice, as to the name or deſcription of the veſſel, the names of the maſter and owners, and of the places from or to which the veſſel was bound, and the occaſion of the diſtreſs; which examination the juſtice ſhall take in writing, and ſhall deliver a copy thereof to the ſaid officer of the cuſtoms, who ſhall forthwith tranſmit the ſame to the ſecretary of the admiralty, who ſhall publiſh the ſame in the next *London* gazette, or ſo much thereof as ſhall be neceſſary for the information of the perſons intereſted or concerned therein.

And if no perſon ſhall appear to claim the goods ſaved, the officer of the cuſtoms ſhall apply to three of the neareſt juſtices, who ſhall put him or ſome other reſponſible perſon in poſſeſſion, taking an account in writing of the goods, to be ſigned by the ſaid officer; and if they be not claimed in a year, they ſhall be ſold (and if periſhable, ſhall be forthwith ſold) and the money returned to the exchequer, till claimed by the owner.

But this ſhall not prejudice the right of any lords of manors, or others, lawfully claiming wreck, or goods *flotſam*, *jetſam*, or *lagan*.

CONCLUSION.

HAVING thus finiſhed the work propoſed, it may be requiſite, upon the whole, to ſubjoin one ſingle reflection, which will occur to every reader, in peruſing almoſt every one of the larger titles of this book; and that is, concerning the poſſibility and expediency of reforming the ſtatute law. The ſtatutes at large, from the very nature of the thing, have in proceſs of time become very cumberſome, and very intricate. They are not to

be

be purchaſed but for a larger ſum of money, nor to be underſtood without a greater expence of time, than a wiſe man would often chuſe to employ in that way.

The courſe to be taken in that matter ſeems to be this:

Firſt, actually to repeal all thoſe ſtatutes, and parts of ſtatutes, which are *virtually repealed* by ſubſequent contradictory ſtatutes.

Secondly, to repeal all thoſe ſtatutes which are *obſolete*, and grown out of uſe, by the alteration of times and circumſtances.

Thirdly, to repeal all thoſe ſtatutes, which being neither contradicted by ſubſequent ſtatutes, nor become obſolete, yet are rendred *uſeleſs* by ſubſequent ſtatutes enacting the ſame things over again, with alterations and amendments.

Fourthly, to repeal, or alter, all thoſe ſtatutes which are *frivolous*, that is, which poſſibly cannot, or probably never will be executed: ſuch as thoſe which appoint an offender to be whipped by the hands of the common hangman, where perhaps there is no ſuch officer; or which prohibit an offence under a very ſmall penalty to be recovered in the courts at *Weſtminſter*, where the reward will not countervail the expence of recovering it.

Fifthly, to omit all thoſe ſtatutes, which although enacted to be publick ſtatutes, yet are only *of private concern*; ſuch as thoſe for bridges in particular places, or paving the ſtreets in ſuch a market town; and the like.

Sixthly, as to the reſt, to lay all the ſtatutes, and clauſes of ſtatutes together, which relate to the ſame ſubject, and out of the whole to compoſe one, two, or more uniform and conſiſtent ſtatutes; and then to repeal all thoſe other, as workmen deſtroy the ſcaffolding when they have erected the building.

I know but of one material objection, againſt this method of proceeding; and that is, that the law being now for the moſt part well ſettled upon the ſtatutes, notwithſtanding their acknowledged diſorder and confuſion, this would tend to unſettle all again, by breaking the connexion which there is between one ſtatute and another, and one part of a ſtatute and another, altering the words and phraſes, and after all perhaps not much mending the matter, ſince it is poſſible that the new ſtatutes may be as liable to objections as the former were.

But this is an argument, not ſo much againſt the thing it ſelf, as againſt the manner in which it may be executed. As to breaking the connexion, it is certain that for the moſt

moſt part there is no connexion; and where there is, that may eaſily be preſerved: And it ought to be laid down as an invariable rule, to retain as much as poſſible the identical words and ſentences of the former ſtatutes; only rejecting what is ſuperfluous, inſerting the clear law as it now ſtands, and putting the ſame into a form more regular, conciſe, and eaſy. And this ſeemeth no way impoſſible to be done, by any perſon of a tolerable underſtanding, endowed only with a clear head, and much patience.

THE END.

ERRATA.

VOL. I.

Page 93. l. 2. for *inclues*, read *includes*.
155. l. 32. for *baſes*, read *caſes*.
160. l. 35. for *ſtatues*, read *ſtatutes*.
171. l. 18. for *in*, read *is*.
177. l. 3. for *to kept*, read *to be kept*.
300. l. 24. for *caſe*, read *eaſe*.
354. l. 26. for *lands*, read *hands*.
395. l. 35. for, *there* read *their*.

VOL. III.

169. l. 5. for *whereby*, read *where by*.
266. l. 10. for *now or laſt*, read *now laſt*.
346. l. 16. for *do*, read *to*.
427. l. ult. for *be*, read *been*.
445. l. 13. for 17, read 18.
473. l. 31. for *of*, read *for*.

A TABLE of the STATUTES contained in this Work, ſpecifying the Titles under which they are inſerted.

Hen. III.

9 *H.* 3. *c.* 15. bridges.
9 *H.* 3. *c.* 17. torn.
9 *H.* 3. *c.* 35. torn.
52 *H.* 3. *c.* 4. diſtreſs.
52 *H.* 3. *c.* 10. clergymen, torn.
52 *H.* 3. *c.* 15. diſtreſs.

Edward I.

3 *Ed.* 1. *c.* 4. wreck.
3 *Ed.* 1. *c.* 9. coroner, hue and cry.
3 *Ed.* 1. *c.* 10. coroner.
3 *Ed.* 1. *c.* 12. mute.
3 *Ed.* 1. *c.* 13. rape, women.
3 *Ed.* 1. *c.* 14. introduction, proceſs.
3 *Ed.* 1. *c.* 15. introduction, bail, burning, coin, larceny, treaſon, homicide.
3 *Ed.* 1. *c.* 20. game.
3 *Ed.* 1. *c.* 26. extortion.
3 *Ed.* 1. *c.* 34. ſlander.
4 *Ed.* 1. *ſt.* 2. treaſure trove, coroner.
13 *Ed.* 1. circumſpecte agatis, clergymen, ſlander.
13 *Ed.* 1. *ſt.* 1. *c.* 12. appeal.
13 *Ed.* 1. *ſt.* 1. *c.* 13. torn.
13 *Ed.* 1. *ſt.* 1. *c.* 34. rape, wife.
13 *Ed.* 1. *ſt.* 1. *c.* 38. jurors.
13 *Ed.* 1. *ſt.* 1. *c.* 39. ſheriff.
13 *Ed.* 1. *ſt.* 1. *c.* 45. clergymen.
13 *Ed.* 1. *ſt.* 1. *c.* 46. wood.
13 *Ed.* 1. *ſt.* 1. *c.* 49. buying of titles.
13 *E.* 1. *ſt.* 2. *c.* 1. robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 2. robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 4. hue and cry, watch.
13 *Ed.* 1. *ſt.* 2. *c.* 5. highways, robbery.
13 *Ed.* 1. *ſt.* 2. *c.* 6. churchyard, hue and cry, conſtable.
13 *Ed.* 1. *ſt.* 2. *c.* 47. game.
21 *Ed.* 1. *ſt.* 2. game.
33 *Ed.* 1. *ſt.* 2. conſpiracy, maintenance.
33 *Ed.* 1. *ſt.* 4. jurors.

Edw. II.

1 *Ed.* 2. *ſt.* 2. priſon breaking.
9 *Ed.* 2. *c.* 3. clergymen.
9 *Ed.* 2. *c.* 4. ſlander.
9 *Ed.* 2. *c.* 9. clergymen, diſtreſs.
9 *Ed.* 2. *ſt.* 2. ſheriff.
17 *Ed.* 2. wreck.
17 *Ed.* 2. *ſt.* 1. *c.* 9, 10. lunaticks.
18 *Ed.* 2. hue and cry.

Edw. III.

1 *Ed.* 3. *c.* 16. juſtices.
1 *Ed.* 3. *c.* 17. torn.
1 *Ed.* 3. *ſt.* 2. *c.* 14. maintenance.

2 *Ed.* 3. *c.* 3. affray, forcible entry.
4 *Ed.* 3. *c.* 2. juſtices.
4 *Ed.* 3. *c.* 9. ſheriff.
4 *Ed.* 3. *c.* 10. commitment, gaol.
5 *Ed.* 3. *c.* 4. ſheriff.
5 *Ed.* 3. *c.* 14. watch.
9 *Ed.* 3. *ſt.* 1. *c.* 3. clergymen.
11 *Ed.* 3. *c.* 3. wool.
14 *Ed.* 3. *ſt.* 1. *c.* 7. ſheriff.
14 *Ed.* 3. *ſt.* 1. *c.* 8. coroner.
14 *Ed.* 3. *ſt.* 1. *c.* 10. gaol, ſheriff.
18 *Ed.* 3. *ſt.* 2. *c.* 2. juſtices.
20 *Ed.* 3. *c.* 4. maintenance.
25 *Ed.* 3. *c.* 14. proceſs.
25 *Ed.* 3. *ſt.* 5. *c.* 2. coin, treaſon.
25 *Ed.* 3. *ſt.* 6. popery.
27 *Ed.* 3. *c.* 1. præmunire, popery.
27 *Ed.* 3. *c.* 2. pardon.
27 *Ed.* 3. *ſt.* 2. *c.* 8. jurors.
28 *Ed.* 3. *c.* 6. coroner.
28 *Ed.* 3. *c.* 7. ſheriff.
28 *Ed.* 3. *c.* 11. robbery.
28 *Ed.* 3. *c.* 13. jurors.
31 *Ed.* 3. *ſt.* 1. *c.* 15. torn.
34 *Ed.* 3. *c.* 1. arreſt, barators, juſtices, riot, ſurety.
34 *Ed.* 3. *c.* 5. juſtices.
34 *Ed.* 3. *c.* 22. game.
37 *Ed.* 3. *c.* 19. game.
42 *Ed.* 3. *c.* 9. eſtreat.
50 *Ed.* 3. *c.* 5. arreſt, churchyard, clergymen, publick worſhip.

Rich. II.

1 *R.* 2. *c.* 4. maintenance.
1 *R.* 2. *c.* 9. maintenance.
1 *R.* 2. *c.* 11. ſheriff.
1 *R.* 2. *c.* 15. churchyard, clergymen, publick worſhip.
2 *R.* 2. *ſt.* 1. *c.* 5. ſlander.
2 *R.* 2. *ſt.* 1. *c.* 15. arreſt.
3 *R.* 2. *c.* 3. popery.
5 *R.* 2. *c.* 8. forcible entry.
7 *R.* 2. *c.* 12. popery.
12 *R.* 2. *c.* 10. ſeſſions.
12 *R.* 2. *c.* 11. ſlander.
12 *R.* 2. *c.* 15. popery.
13 *R.* 2. *c.* 7. juſtices.
13 *R.* 2. *c.* 13. game.
13 *R.* 2. *c.* 19. game.
13 *R.* 2. *ſt.* 2. *c.* 1. pardon, rape.
13 *R.* 2. *ſt.* 2. *c.* 2. popery.
13 *R.* 2. *ſt.* 2. *c.* 3. popery.
14 *R.* 2. *c.* 11. ſeſſions.
15 *R.* 2. *c.* 2. forcible entry.
16 *R.* 2. *c.* 5. popery, præmunire.
19 *R.* 2. *c.* 9. game.
20 *R.* 2. *c.* 1. affray.

Hen. IV.

4 *H.* 4. *c.* 5. ſheriff.
5 *H.* 4. *c.* 3. watch.
5 *H.* 4. *c.* 10. commitment, gaol.
7 *H.* 4. *c.* 3. eſtreat.
7 *H.* 4. *c.* 8. popery.
13 *H.* 4. *c.* 7. riot.

Hen. V.

1 *H.* 5. *c.* 4. ſheriff.
1 *H.* 5. *c.* 5. addition, indictment.
2 *H.* 5. *c.* 4. ſeſſions.
2 *H.* 5. *c.* 8. riot.
2 *H.* 5. *c.* 9. riot.
2 *H.* 5. *ſt.* 2. *c.* 1. juſtices.
3 *H.* 5. *ſt.* 2. *c.* 4. popery.

Hen. VI.

2 *H.* 6. *c.* 15. game.
8 *H.* 6. *c.* 5. weights.
8 *H.* 6. *c.* 9. forcible entry, jurors.
8 *H.* 6. *c.* 10. proceſs.
8 *H.* 6. *c.* 12. records.
8 *H.* 6. *c.* 14. riot.
8 *H.* 6. *c.* 22. wool.

8 *H.* 6. *c.* 29. jurors.
11 *H.* 6. *c.* 6. juſtices.
14 *H.* 6. *c.* 4. ſeſſions.
18 *H.* 6. *c.* 19. ſoldiers.
23 *H.* 6. *c.* 8. ſheriff.
23 *H.* 6. *c.* 10. ſheriff.
27 *H.* 6. *c.* 10. arreſt.
31 *H.* 6. *c.* 9. women.

Edw. IV.

1 *Ed.* 4. *c.* 2. proceſs, torn.
4 *Ed.* 4. *c.* 1. ſervants, wool.
7 *Ed.* 4. *c.* 1. wool.
7 *Ed.* 4. *c.* 3. wool.
17 *Ed.* 4. *c.* 4. tiles.
17 *Ed.* 4. *c.* 6. ſheriff.
22 *Ed.* 4. *c.* 6. game.

Rich. III.

1 *R.* 3. *c.* 3. bail, forfeiture.
1 *R.* 3. *c.* 4. jurors, torn.

Hen. 7.

1 *H.* 7. *c.* 4. clergymen.
1 *H.* 7. *c.* 7. game.
3 *H.* 7. *c.* 1. appeal, coroner, recognizance, ſurety, homicide, jurors.
3 *H.* 7. *c.* 2. apothecary, women.
3 *H.* 7. *c.* 3. gaol.
3 *H.* 7. *c.* 11. wool.
4 *H.* 7. *c.* 3. butchers.
4 *H.* 7. *c.* 13. clergymen.
4 *H.* 7. *c.* 20. information.
7 *H.* 7. *c.* 1. ſoldiers.
11 *H.* 7. *c.* 4. weights.
11 *H.* 7. *c.* 15. county court, eſtreat.
11 *H.* 7. *c.* 17. game.
12 *H.* 7. *c.* 1. wool.
19 *H.* 7. *c.* 6. pewter.
19 *H.* 7. *c.* 10. gaol, ſheriff.
19 *H.* 7. *c.* 11. game.
19 *H.* 7. *c.* 13. jurors, riot.

Hen. VIII.

3 *H.* 8. *c.* 5. ſoldiers.
3 *H.* 8. *c.* 9. gaming.
3 *H.* 8. *c.* 12. jurors.
4 *H.* 8. *c.* 7. pewter.
5 *H.* 8. *c.* 2. wool.
5 *H.* 8. *c.* 6. phyſicians.
6 *H.* 8. *c.* 8. wool.
14 & 15 *H.* 8. *c.* 3. wool.
14 & 15 *H.* 8. *c.* 10. game.
14 & 15 *H.* 8. *c.* 11. wool.
21 *H.* 8. *c.* 7. apprentices, infants, larceny, ſervants.
21 *H.* 8. *c.* 11. reſtitution.
21 *H.* 8. *c.* 13. clergymen.
22 *H.* 8. *c.* 5. bridges, county rate.
22 *H.* 8. *c.* 11. banks.
22 *H.* 8. *c.* 14. jurors.
23 *H.* 8. *c.* 1. burning.
23 *H.* 8. *c.* 5. ſewers.
23 *H.* 8. *c.* 13. jurors.
23 *H.* 8. *c.* 17. wool.
24 *H.* 8. *c.* 5. homicide, robbery.
25 *H.* 8. *c.* 3. burning.
25 *H.* 8. *c.* 6. buggery.
25 *H.* 8. *c.* 9. pewter.
25 *H.* 8. *c.* 10. ſewers.
25 *H.* 8. *c.* 11. game.
25 *H.* 8. *c.* 13. cattle, ſheep.
25 *H.* 8. *c.* 18. wool.
25 *H.* 8. *c.* 20. præmunire.
26 *H.* 8. *c.* 14. præmunire.
27 *H.* 8. *c.* 4. juſtices.
27 *H.* 8. *c.* 16. inrollment.
27 *H.* 8. *c.* 20. tithes.
27 *H.* 8. *c.* 24. juſtices.
28 *H.* 8. *c.* 14. wine.
32 *H.* 8. *c.* 7. tithes.

32 *H.* 8. *c.* 9. buying of titles, maintenance.
32 *H.* 8. *c.* 13. horſes.
32 *H.* 8. *c.* 40. conſtable, phyſicians.
33 *H.* 8. *c.* 1. cheat.
33 *H.* 8. *c.* 3. wool.
33 *H.* 8. *c.* 4. pewter.
33 *H.* 8. *c.* 6. game.
33 *H.* 8. *c.* 7. pewter.
33 *H.* 8. *c.* 16. wool.
33 *H.* 8. *c.* 17. hemp.
33 *H.* 8. *c.* 23. jurors.
34 & 35 *H.* 8. *c.* 14. clergy, clerk of the peace.
35 *H.* 8. *c.* 6. jurors.
35 *H.* 8. *c.* 17. wood.
37 *H.* 8. *c.* 1. clerk of the peace, cuſtos rotulorum, juſtices.
37 *H.* 8. *c.* 6. burning, wood.
37 *H.* 8. *c.* 8. indictment.
37 *H.* 8. *c.* 23. wine.

Edw. VI.

1 *Ed.* 6. *c.* 1. publick worſhip.
1 *Ed.* 6. *c.* 6. wool.
1 *Ed.* 6. *c.* 7. juſtices.
1 *Ed.* 6. *c.* 12. introduction, burning, forfeiture, larceny, peers, treaſon.
2 & 3 *Ed.* 6. *c.* 1. publick worſhip.
2 & 3 *Ed.* 6. *c.* 2. ſoldiers.
2 & 3 *Ed.* 6. *c.* 10. exciſe (malt).
2 & 3 *Ed.* 6. *c.* 15. alehouſes, juſtices, bread, butchers.
2 & 3 *Ed.* 6. *c.* 19. faſt days.
2 & 3 *Ed.* 6. *c.* 24. acceſſary, homicide.
2 & 3 *Ed.* 6. *c.* 25. county court.
2 & 3 *Ed.* 6. *c.* 37. pewter.
3 & 4 *Ed.* 6. *c.* 1. cuſtos rotulorum.
3 & 4 *Ed.* 6. *c.* 2. butter and cheeſe, wool.
3 & 4 *Ed.* 6. *c.* 6. wood.
3 & 4 *Ed.* 6. *c.* 8. ſewers.
3 & 4 *Ed.* 6. *c.* 10. popery.
3 & 4 *Ed.* 6. *c.* 19. cattle.
5 & 6 *Ed.* 6. *c.* 4. churchyard.
5 & 6 *Ed.* 6. *c.* 5. ſoldiers.
5 & 6 *Ed.* 6. *c.* 9. larceny.
5 & 6 *Ed.* 6. *c.* 10. burning.
5 & 6 *Ed.* 6. *c.* 14. butter and cheeſe, cattle, foreſtalling, juſtices.
5 & 6 *Ed.* 6. *c.* 24. wool.

Mary.

1 *M. ſ.* 1. *c.* 1. treaſon.
1 *M. ſ.* 2. *c.* 3. publick worſhip.
1 *M. ſ.* 2. *c.* 6. coin.
1 *M. ſ.* 2. *c.* 8. juſtices, ſheriff.
1 *M. ſ.* 2. *c.* 9. phyſicians.
1 & 2 *P. & M. c.* 4. vagrants.
1 & 2 *P. & M. c.* 5. wood.
1 & 2 *P. & M. c.* 11. coin.
1 & 2 *P. & M. c.* 12. diſtreſs.
1 & 2 *P. & M. c.* 13. recognizance, aſſizes, bail, coroner, examination.
1 & 2 *P. & M. c.* 14. wool.
2 & 3 *P. & M. c.* 3. cattle.
2 & 3 *P. & M. c.* 7. horſes.
2 & 3 *P. & M. c.* 8. highways.
2 & 3 *P. & M. c.* 10. examination.
2 & 3 *P. & M. c.* 13. wool.
2 & 3 *P. & M. c.* 16. thames.
4 & 5 *P. & M. c.* 3. ſoldiers.
4 & 5 *P. & M. c.* 4. burning.
4 & 5 *P. & M. c.* 5. wool.
4 & 5 *P. & M. c.* 7. jurors.
4 & 5 *P. & M. c.* 8. women.

Eliz.

1 *El. c.* 2. churchwardens, common prayer, lord's day, popery, publick worſhip.

1 *El.* c. 14. wool.
1 *El.* c. 17. game.
5 *El.* c. 1. popery, ſeſſions.
5 *El.* c. 4. apprentices, infants, ſervants.
5 *El.* c. 5. infants, wine, faſt days.
5 *El.* c. 9. perjury.
5 *El.* c. 11. coin.
5 *El.* c. 12. butter and cheeſe, cattle, corn.
5 *El.* c. 13. highways.
5 *El.* c. 14. forgery.
5 *El.* c. 15. prophecies.
5 *El.* c. 20. vagrants.
5 *El.* c. 21. game.
5 *El.* c. 26. inrollment.
8 *El.* c. 3. ſheep.
8 *El.* c. 4. larceny.
8 *El.* c. 7. wool.
8 *El.* c. 9. alehouſes.
8 *El.* c. 12. wool.
13 *El.* c. 2. popery.
13 *El.* c. 7. bankrupt.
13 *El.* c. 25. butter and cheeſe, cattle, corn, foreſtalling.
14 *El.* c. 3. coin.
14 *El.* c. 5. county rate, gaol.
14 *El.* c. 9. jurors.
14 *El.* c. 12. wool.
18 *El.* c. 1. coin.
18 *El.* c. 3. baſtards.
18 *El.* c. 5. information.
18 *El.* c. 7. burglary, rape, women.
18 *El.* c. 10. highways.
23 *El.* c. 1. popery, publick worſhip.
23 *El.* c. 10. game.
27 *El.* c. 2. popery.
27 *El.* c. 7. jurors.
27 *El.* c. 12. ſheriff.
27 *El.* c. 13. robbery.
29 *El.* c. 6. popery, publick worſhip.
31 *El.* c. 3. proceſs.
31 *El.* c. 4. ſtores.
31 *El.* c. 5. introduction, buying of titles, extortion.
31 *El.* c. 7. cottage.
31 *El.* c. 11. forcible entry.
31 *El.* c. 12. reſtitution.
35 *El.* c. 2. popery.
35 *El.* c. 7. faſt days.
35 *El.* c. 9. women.
35 *El.* c. 10. wool.
39 *El.* c. 17. vagrants.
39 *El.* c. 20. wool.
43 *El.* c. 2. apprentices, churchwardens, cottage, gaol, infants, poor.
43 *El.* c. 3. ſoldiers.
43 *El.* c. 7. corn, wood.
43 *El.* c. 10. wool.
43 *El.* c. 13. burning, northern borders.
43 *El.* c. 14. fuel.

James I.

1 *J.* c. 4. popery, publick worſhip.
1 *J.* c. 5. attorney.
1 *J.* c. 6. ſervants.
1 *J.* c. 8. homicide.
1 *J.* c. 9. alehouſes, churchwardens.
1 *J.* c. 10. larceny.
1 *J.* c. 11. polygamy.
1 *J.* c. 13. game.
1 *J.* c. 15. bankrupt.
1 *J.* c. 16. thames.
1 *J.* c. 17. apprentices.
1 *J.* c. 22. butchers, leather, lord's day.
1 *J.* c. 25. corn.
1 *J.* c. 27. churchwardens, game.
1 *J.* c. 31. plague.
3 *J.* c. 4. churchwardens, lord's day, popery, publick worſhip.
3 *J.* c. 5. phyſicians, popery, publick worſhip.

3 *J.* *c.* 10. conſtable, commitment, felony.
3 *J.* *c.* 12. game.
3 *J.* *c.* 13. game.
3 *J.* *c.* 14. ſewers.
3 *J.* *c.* 16. wool.
3 *J.* *c.* 17. wool.
3 *J.* *c.* 21. blaſphemy.
4 *J.* *c.* 2. wool.
4 *J.* *c.* 4. alehouſes.
4 *J.* *c.* 5. churchwardens.
4 *J.* *c.* 6. leather.
7 *J.* *c.* 1. northern borders.
7 *J.* *c.* 3. apprentices.
7 *J.* *c.* 4. baſtards, county rate, houſe of correction, poor, vagrants.
7 *J.* *c.* 5. churchwardens, poor, conſtables, juſtices.
7 *J.* *c.* 6. popery.
7 *J.* *c.* 7. ſervants.
7 *J.* *c.* 8. cattle.
7 *J.* *c.* 10. alſehouſes.
7 *J.* *c.* 11. game.
7 *J.* *c.* 12. evidence.
7 *J.* *c.* 13. game.
21 *J.* *c.* 3. præmunire.
21 *J.* *c.* 4. information, proceſs.
21 *J.* *c.* 7. alehouſes, churchwardens.
21 *J.* *c.* 12. conſtable, churchwardens, juſtices, poor.
21 *J.* *c.* 15. forcible entry.
21 *J.* *c.* 16. ſlander.
21 *J.* *c.* 18. wool.
21 *J.* *c.* 19. bankrupt.
21 *J.* *c.* 22. butter and cheeſe.
21 *J.* *c.* 26. bail.
21 *J.* *c.* 27. baſtard, homicide.
21 *J.* *c.* 28. apprentices, horſes, ſanctuary.

Charles I.

1 *C.* *c.* 1. churchwardens, lord's day.
1 *C.* *c.* 4. alehouſes.
3 *C.* *c.* 1. butchers, carrier, cattle, lord's day.
3 *C.* *c.* 2. popery.
3 *C.* *c.* 3. alehouſes, churchwardens.
3 *C.* *c.* 4. apprentices, cattle, baſtards, poor.
16 *C.* *c.* 19. churchwardens, weights.
16 *C.* *c.* 21. gunpowder.

Charles II.

12 *C.* 2. *c.* 23. exciſe (ſpirituous liquors).
12 *C.* 2. *c.* 24. alehouſes, exciſe (ale, ſpirituous liquors), infants, purveyors.
12 *C.* 2. *c.* 25. wine.
12 *C.* 2. *c.* 32. ſheep, wool.
12 *C.* 2. *c.* 34. tobacco.
13 *C.* 2. *c.* 1. præmunire.
13 *C.* 2. *c.* 5. petition.
13 *C.* 2. *c.* 10. game.
13 *C.* 2. *ſt.* 2. *c.* 1. office.
13 & 14 *C.* 2. *c.* 3. militia.
13 & 14 *C.* 2. *c.* 4. churchwardens, common prayer, publick worſhip.
13 & 14 *C.* 2. *c.* 5. apprentices, wool.
13 & 14 *C.* 2. *c.* 7. leather.
13 & 14 *C.* 2. *c.* 11. exciſe, jurors.
13 & 14 *C.* 2. *c.* 12. baſtards, conſtable, poor, ſervants, vagrants.
13 & 14 *C.* 2. *c.* 13. buttons.
13 & 14 *C.* 2. *c.* 15. ſervants, ſilk.
13 & 14 *C.* 2. *c.* 18. wool.
13 & 14 *C.* 2. *c.* 19. wool.
13 & 14 *C.* 2. *c.* 21. ſheriff.
13 & 14 *C.* 2. *c.* 22. northern borders, wool.
13 & 14 *C.* 2. *c.* 24. bankrupt.

13 & 14 *C.* 2. *c.* 26. butter, churchwardens.
15 *C.* 2. *c.* 2. wood.
15 *C.* 2. *c.* 4. militia.
15 *C.* 2. *c.* 7. foreſtalling, coin, tobacco.
15 *C.* 2. *c.* 8. butchers.
15 *C.* 2. *c.* 11. ale, exciſe, (coffee).
15 *C.* 2. *c.* 15. apprentices, linen.
16 *C.* 2. *c.* 7. gaming.
17 *C.* 2. *c.* 3. church.
18 *C.* 2. *c.* 2. cattle, game.
18 *C.* 2. *c.* 3. northern borders.
19 *C.* 2. *c.* 3. ſewers.
19 *C.* 2. *c.* 4. county rate, gaol.
20 *C.* 2. *c.* 5. leather.
20 *C.* 2. *c.* 6. ſervants.
20 *C.* 2. *c.* 7. cattle.
22 *C.* 2. *c.* 1. churchwardens.
22 *C.* 2. *c.* 5. ſtores, wool.
22 *C.* 2. *c.* 8. churchwardens, corn, weights, wool.
22 *C.* 2. *c.* 12. highways, ſcavengers.
22 & 23 *C.* 2. *c.* 1. maim.
22 & 23 *C.* 2. *c.* 5. exciſe (ale).
22 & 23 *C.* 2. *c.* 7. burning, cattle, corn, horſes, ſheep, wood.
22 & 23 *C.* 2. *c.* 12. corn, weights.
22 & 23 *C.* 2. *c.* 13. corn.
22 & 23 *C.* 2. *c.* 17. ſcavengers, ſewers.
22 & 23 *C.* 2. *c.* 20. gaol.
22 & 23 *C.* 2. *c.* 22. clerk of the peace, eſtreat.
22 & 23 *C.* 2. *c.* 25. game.
22 & 23 *C.* 2. *c.* 26. tobacco.
25 *C.* 2. *c.* 2. oaths, office, popery, ſeſſions.
29 *C.* 2. *c.* 3. evidence.
29 *C.* 2. *c.* 7. arreſt, churchwardens, lord's day, proceſs, robbery.
29 & 30 *C.* 2. *c.* 2. northern borders.
30 *C.* 2. *c.* 3. ſeſſions, wool.
30 *C.* 2. *c.* 9. game.
30 *C.* 2. *ſt.* 2. *c.* 1. oaths, popery.
31 *C.* 2. *c.* 1. ſoldiers.
31 *C.* 2. *c.* 2. bail, gaol, præmunire, treaſon.
32 *C.* 2. *c.* 1. wool.
32 *C.* 2. *c.* 2. cattle, butter, churchwardens.

James II.

1 *J.* 2. *c.* 8. gunpowder.
1 *J.* 2. *c.* 17. poor.

William III.

1 *W.* *c.* 5. exciſe (leather).
1 *W.* *c.* 8. robbery.
1 *W.* *c.* 9. popery.
1 *W.* *c.* 12. corn.
1 *W.* *c.* 15. popery.
1 *W.* *c.* 18. blaſphemy, churchwardens, conſtable, diſſenters, jurors, oaths, publick worſhip.
1 *W.* *c.* 21. clerk of the peace, cuſtos rotulorum.
1 *W.* *c.* 22. exciſe (ale).
1 *W.* *c.* 24. alehouſes, exciſe (ale).
1 *W.* *c.* 26. popery.
1 *W.* *c.* 27. exciſe (ale).
1 *W.* *c.* 32. wool.
1 *W.* *c.* 33. leather.
2 *W.* *c.* 5. diſtreſs.
2 *W.* *ſ.* 2. *c.* 2. bail.
2 *W.* *ſ.* 2. *c.* 4. exciſe (candles).
2 *W.* *ſ.* 2. *c.* 8. hay, ſcavengers, ſewers.
3 *W.* *c.* 8. butter.
3 *W.* *c.* 9. burglary, clergy, larceny, mute, women, proceſs.
3 *W.* *c.* 10. game.
3 *W.* *c.* 11. churchwardens, poor, ſeamen.

3 *W.* *c.* 12. carrier, churchwardens, highways.
3 *W.* *c.* 15. exciſe (ſpirits).
4 *W.* *c.* 3. annuities, exciſe (ſpirits).
4 *W.* *c.* 4. bail.
4 *W.* *c.* 5. exciſe (plate, ſpirits).
4 *W.* *c.* 7. butter.
4 *W.* *c.* 8. robbery.
4 *W.* *c.* 10. buttons.
4 & 5 *W.* *c.* 18. information.
4 & 5 *W.* *c.* 22. proceſs.
4 & 5 *W.* *c.* 23. game.
4 & 5 *W.* *c.* 24. eſtreat, jurors, ſeſſions, clerk of the peace, women.
5 *W.* *c.* 5. annuities.
5 *W.* *c.* 7. exciſe (ſalt).
5 *W.* *c.* 11. certiorari, highways.
5 *W.* *c.* 13. pardon.
5 *W.* *c.* 20. annuities, exciſe.
5 *W.* *c.* 21. ſoldiers, ſtamps.
6 *W.* *c.* 1. exciſe.
6 *W.* *c.* 4. churchwardens, jurors, phyſicians, conſtable.
6 & 7 *W.* *c.* 12. ſtamps.
6 & 7 *W.* *c.* 16. thames.
6 & 7 *W.* *c.* 17. coin.
6 & 7 *W.* *c.* 18. apprentices.
6 & 7 *W.* *c.* 20. exciſe (ſpirits).
7 & 8 *W.* *c.* 3. evidence, treaſon.
7 & 8 *W.* *c.* 6. tithes.
7 & 8 *W.* *c.* 19. alehouſes, coin.
7 & 8 *W.* *c.* 28. wool.
7 & 8 *W.* *c.* 29. highways.
7 & 8 *W.* *c.* 30. exciſe (ale, ſpirits).
7 & 8 *W.* *c.* 31. exciſe (ſalt).
7 & 8 *W.* *c.* 32. infants, jurors, ſeſſions.
7 & 8 *W.* *c.* 34. evidence, jurors, oaths, tithes.
8 & 9 *W.* *c.* 10. jurors.
8 & 9 *W.* *c.* 16. highways.
8 & 9 *W.* *c.* 17. hay.
8 & 9 *W.* *c.* 19. exciſe (ale, ſpirits).
8 & 9 *W.* *c.* 26. coin.
8 & 9 *W.* *c.* 30. apprentices, poor.
8 & 9 *W.* *c.* 31. partition.
8 & 9 *W.* *c.* 33. certiorari.
8 & 9 *W.* *c.* 36. ſervants.
8 & 9 *W.* *c.* 37. ſcavengers, ſewers.
9 & 10 *W.* *c.* 6. exciſe (ſalt).
9 & 10 *W.* *c.* 7. fireworks.
9 & 10 *W.* *c.* 11. poor.
9 & 10 *W.* *c.* 15. award.
9 & 10 *W.* *c.* 21. coin.
9 & 10 *W.* *c.* 25. ſtamps.
9 & 10 *W.* *c.* 27. churchwardens, pedlars.
9 & 10 *W.* *c.* 28. exciſe (plate).
9 & 10 *W.* *c.* 32. blaſphemy.
9 & 10 *W.* *c.* 40. wool.
9 & 10 *W.* *c.* 41. ſtores.
9 & 10 *W.* *c.* 43. ſilks.
9 & 10 *W.* *c.* 44. exciſe, (ſalt,) ſtamps.
10 & 11 *W.* *c.* 4. exciſe (ſpirits.)
10 & 11 *W.* *c.* 10. wool.
10 & 11 *W.* *c.* 12. militia.
10 & 11 *W.* *c.* 17. gaming.
10 & 11 *W.* *c.* 21. alehouſes, exciſe (ale, ſpirits).
10 & 11 *W.* *c.* 22. exciſe (ſalt).
10 & 11 *W.* *c.* 23. burglary, churchwardens, cletk of the peace, conſtable, indictment, larceny.
10 & 11 *W.* *c.* 24. lord's day.
11 & 12 *W.* *c.* 3. buttons.
11 & 12 *W.* *c.* 4. popery, ſchoolmaſter.
11 & 12 *W.* *c.* 15. alehouſes, ſeſſions.
11 & 12 *W.* *c.* 19. county rate, gaol.
11 & 12 *W.* *c.* 20. corn, wool.
11 & 12 *W.* *c.* 21. lord's day, thames.

12 & 13 *W.* *c.* 3. parliament.
12 & 13 *W.* *c.* 4. exciſe (plate).
12 & 13 *W.* *c.* 11. exciſe (ale, ſpirits).
13 *W.* *c.* 3. treaſon.

Anne.

1 *An.* *c.* 8. juſtices.
1 *An.* *c.* 9. coin, exciſe (plate), burning.
1 *An.* *c.* 15. apples.
1 *An.* *c.* 18. bridges, weights.
1 *An.* *c.* 21. exciſe (ſalt).
1 *An.* *ſt.* 2. *c.* 9. acceſſary, burning.
1 *An.* *ſt.* 2. *c.* 13. jurors.
1 *An.* *ſt.* 2. *c.* 14. exciſe (ſpirits).
1 *An.* *ſt.* 2. *c.* 18. ſervants.
1 *An.* *ſt.* 2. *c.* 22. alehouſes, ſtamps.
2 & 3 *An.* *c.* 3. annuities.
2 & 3 *An.* *c.* 6. apprentices, county rate.
2 & 3 *An.* *c.* 14. exciſe (ſalt).
2 & 3 *An.* *c.* 24. exciſe (ſalt).
3 & 4 *An.* *c.* 4. hawkers.
3 & 4 *An.* *c.* 18. jurors, ſeſſions.
4 *An.* *c.* 6. annuities, exciſe (ſpirits).
4 *An.* *c.* 12. exciſe (ſalt, ſpirits.)
4 *An.* *c.* 13. thames.
4 *An.* *c.* 14. churchwardens.
4 *An.* *c.* 16. jurors.
4 *An.* *c.* 19. apprentices.
4 *An.* *c.* 21. game.
5 *An.* *c.* 14. game.
5 *An.* *c.* 19. annuities.
5 *An.* *c.* 20. ſilks.
5 *An.* *c.* 22. annuities.
5 *An.* *c.* 27. wine.
5 *An.* *c.* 29. corn, exciſe (ſalt).
5 *An.* *c.* 31. acceſſary, burglary, larceny, watch.
6 *An.* *c.* 5. annuities.
6 *An.* *c.* 7. præmunire, treaſon.
6 *An.* *c.* 8. wool.
6 *An.* *c.* 12. exciſe (ſalt).
6 *An.* *c.* 29. highways.
6 *An.* *c.* 31. burning, churchwardens, ſervants.
7 *An.* *c.* 10. ſewers.
7 *An.* *c.* 14. books.
7 *An.* *c.* 19. infants.
7 *An.* *c.* 21. treaſon.
7 *An.* *c.* 24. coin.
8 *An.* *c.* 6. buttons.
8 *An.* *c.* 9. apprentices, exciſe (candles), poor, ſtamps.
8 *An.* *c.* 13. exciſe, wool.
8 *An.* *c.* 14. diſtreſs.
8 *An.* *c.* 18. bread, weights.
9 *An.* *c.* 2. plague.
9 *An.* *c.* 5. parliament.
9 *An.* *c.* 6. exciſe (candles), gaming, leather.
9 *An.* *c.* 7. poor.
9 *An.* *c.* 10. poſt.
9 *An.* *c.* 11. butchers, exciſe, (leather), leather.
9 *An.* *c.* 12. alehouſes, exciſe (hops).
9 *An.* *c.* 14. gaming.
9 *An.* *c.* 15. fuel.
9 *An.* *c.* 16. aſſault.
9 *An.* *c.* 18. highways.
9 *An.* *c.* 21. apprentices, poor.
9 *An.* *c.* 23. alehouſes, exciſe (ſalt), hackney coaches, ſtamps.
9 *An.* *c.* 25. game.
9 *An.* *c.* 26. game, thames.
10 *An.* *c.* 2. diſſenters.
10 *An.* *c.* 14. jurors.
10 *An.* *c.* 15. bankrupt.
10 *An.* *c.* 16. ſervants, wool.
10 *An.* *c.* 19. exciſe (linen, paper, ſoap), hackney coaches, ſtamps.
10 *An.* *c.* 23. parliament.
10 *An.* *c.* 25. militia.

10 *An.* *c.* 26. exciſe (candles, leather, ſoap, ſtarch, wire), gaming, ſtamps.
12 *An.* *c.* 2. alehouſes, exciſe (ale, malt), ſtamps.
12 *An.* *c.* 7. apprentices, burglary, infants, larceny.
12 *An.* *c.* 9. exciſe (leather, linen).
12 *An.* *c.* 18. poor.
12 *An.* *ſt.* 2. *c.* 3. exciſe (ſpirits).
12 *An.* *ſt.* 2. *c.* 9. exciſe (leather, linen, paper, ſoap, ſtarch), ſtamps.
12 *An.* *ſt.* 2. *c.* 14. popery.
12 *An.* *ſt.* 2. *c.* 18. ſhips, wreck.
12 *An.* *ſt.* 2. *c.* 19. exciſe (paper).

George I.

1 *G.* *c.* 2. exciſe (ſtarch).
1 *G.* *c.* 5. ſeſſions.
1 *G.* *c.* 11. highways.
1 *G.* *ſt.* 2. *c.* 2. exciſe (malt).
1 *G.* *ſt.* 2. *c.* 4. tobacco.
1 *G.* *ſt.* 2. *c.* 5. riot.
1 *G.* *ſt.* 2. *c.* 6. tithes.
1 *G.* *ſt.* 2. *c.* 13. conſtable, oaths, office, popery.
1 *G.* *ſt.* 2. *c.* 14. ſeamen.
1 *G.* *ſt.* 2. *c.* 15. ſervants, wool.
1 *G.* *ſt.* 2. *c.* 18. game.
1 *G.* *ſt.* 2. *c.* 25. ſeamen, ſtores.
1 *G.* *ſt.* 2. *c.* 26. bread.
1 *G.* *ſt.* 2. *c.* 36. exciſe (linen, paper, ſoap).
1 *G.* 2. *ſt.* 2. *c.* 41. wool.
1 *G.* *ſt.* 2. *c.* 48. burning, wood.
1 *G.* *ſt.* 2. *c.* 52. highways, ſcavengers.
1 *G.* *ſt.* 2. *c.* 55. popery.
1 *G.* *ſt.* 2. *c.* 57. hackney coaches, highways.
3 *G.* *c.* 4. exciſe (leather, ſpirits, ſtarch.)
3 *G.* *c.* 15. burglary, clerk of the peace, eſtreat, larceny, ſheriff.
3 *G.* *c.* 16. ſheriff.
3 *G.* *c.* 18. popery.
3 *G.* *c.* 21. wool.
4 *G.* *c.* 3. exciſe (ale.)
4 *G.* *c.* 6. hawkers.
4 *G.* *c.* 7. buttons.
4 *G.* *c.* 11. acceſſary, clergy, larceny, tranſportation, wool.
5 *G.* *c.* 4. diſſenters.
5 *G.* *c.* 6. office.
5 *G.* *c.* 8. poor.
5 *G.* *c.* 11. exciſe (linen,) tobacco, wool.
5 *G.* *c.* 12. highways.
5 *G.* *c.* 15. game.
5 *G.* *c.* 18. exciſe (ſalt).
5 *G.* *c.* 19. ſtamps.
5 *G.* *c.* 26. gunpowder.
5 *G.* *c.* 27. foreign ſervice.
5 *G.* *c.* 28. game.
6 *G.* *c.* 6. highways.
6 *G.* *c.* 11. exciſe (plate).
6 *G.* *c.* 16. burning, wood.
6 *G.* *c.* 19. commitment, gaol, juſtices.
6 *G.* *c.* 21. alehouſes, exciſe (ale, hops, malt, ſpirits,) poſt, ſtamps, wool.
6 *G.* *c.* 23. aſſault, burglary, county rate, robbery, tranſportation.
7 *G.* *c.* 2. aſſault.
7 *G.* *c.* 7. exciſe (linen).
7 *G.* *c.* 12. buttons.
7 *G.* *c.* 13. ſervants.
7 *G.* *c.* 20. exciſe (ale, plate).
7 *G.* *c.* 31. bankrupt.
8 *G.* 2. *c.* 2. gaming.
8 *G.* *c.* 6. oaths.
8 *G.* *c.* 16. exciſe (ſalt).
8 *G.* *c.* 18. exciſe (ſpirits).
8 *G.* *c.* 19. game.
8 *G.* *c.* 22. ſtock.
8 *G.* *c.* 27. butter.
9 *G.* *c.* 7. juſtices, poor.
9 *G.* *c.* 8. ſtores.
9 *G.* *c.* 9. wool.
9 *G.* *c.* 12. annuities.
9 *G.* *c.* 18. ſcavengers.

9 G. c. 19. gaming.
9 G. c. 22. black act, burning, cattle, corn, game, ſeſſions, wood.
9 G. c. 27. ſervants.
10 G. c. 4. oaths, popery.
10 G. c. 10. exciſe (coffee).
11 G. c. 7. exciſe (paper).
11 G. c. 8. ſtamps.
11 G. c. 23. gunpowder.
11 G. c. 24. wool.
11 G. c. 29. ſhips.
11 G. c. 30. exciſe (candles, coffee, ſalt, ſoap, ſpirits),
12 G. c. 4. exciſe (malt).
12 G. c. 12. hackney coaches.
12 G. c. 28. exciſe (ale, coffee, ſpirits).
12 G. c. 29. attorney.
13 G. c. 7. exciſe (ale).
13 G. c. 23. ſervants, vagrants, wool.
13 G. c. 24. wool.

George II.

1 G. 2. ſt. 2. c. 16. exciſe (malt).
1 G. 2. ſt. 2. c. 17. wine.
2 G. 2. c. 1. exciſe (malt).
2 G. 2. c. 21. homicide.
2 G. 2. c. 22. gaol.
2 G. 2. c. 23. attorney.
2 G. 2. c. 24. bribery, parliament.
2 G. 2. c. 25. forgery, larceny.
2 G. 2. c. 26. thames.
2 G. 2. c. 28. alehouſes, exciſe (ſpirits), gaming.
2 G. 2. c. 36. ſeamen, ſervants.
3 G. 2. c. 7. exciſe (ale, malt).
3 G. 2. c. 8. wool.
3 G. 2. c. 20. exciſe (ſalt).
3 G. 2. c. 25. jurors, ſeſſions.
3 G. 2. c. 27. county rate, gaol.
3 G. 2. c. 29. poor.
4 G. 2. c. 7. jurors.
4 G. 2. c. 9. annuities.
4 G. 2. c. 14. exciſe (coffee, ſtarch.)
4 G. 2. c. 24. thames.
4 G. 2. c. 26. indictment.
4 G. 2. c. 27. ſail cloth.
4 G. 2. c. 28. diſtreſs.
4 G. 2. c. 32. larceny.
4 G. 2. c. 33. poſt.
5 G. 2. c. 12. corn.
5 G. 2. c. 18. attorney, juſtices.
5 G. 2. c. 19. baſtards, certiorari, poor, ſeſſions.
5 G. 2. c. 20. gunpowder, thames.
5 G. 2. c. 21. wool.
5 G. 2. c. 24. exciſe (coffee.)
5 G. 2. c. 30. bankrupt.
5 G. 2. c. 33. highways.
6 G. 2. c. 14. indictment.
6 G. 2. c. 17. exciſe (ſpirits).
6 G. 2. c. 29. thames.
6 G. 2. c. 31. baſtards.
6 G. 2. c. 35. gaming.
6 G. 2. c. 37. black act, exciſe (hops), banks.
7 G. 2. c. 9. highways.
7 G. 2. c. 19. exciſe (hops).
7 G. 2. c. 21. robbery.
7 G. 2. c. 22. forgery.
7 G. 2. c. 25. wool.
8 G. 2. c. 12. exciſe (ſalt).
8 G. 2. c. 16. robbery.
8 G. 2. c. 20. rivers.
8 G. 2. c. 30. ſoldiers.
9 G. 2. c. 5. juſtices, witchcraft.
9 G. 2. c. 23. alehouſes, church-wardens, exciſe (ſpirits).
9 G. 2. c. 26. office.
9 G. 2. c. 30. foreign ſervice.
9 G. 2. c. 33. game.
9 G. 2. c. 34. annuities.
9 G. 2. c. 35. exciſe (coffee, ſpirits).
9 G. 2. c. 37. ſail cloth.
10 G. 2. c. 17. alehouſes, exciſe (ale, ſpirits).
10 G. 2. c. 27. exciſe (paper).
10 G. 2. c. 28. players.
10 G. 2. c. 31. thames.
10 G. 2. c. 32. burning, banks, black act, coalpits, game.

11 G. 2. c. 16. exciſe (ſpirits).
11 G. 2. c. 17. popery.
11 G. 2. c. 19. diſtreſs.
11 G. 2. c. 20. gaol, treaſurer.
11 G. 2. c. 22. corn.
11 G. 2. c. 24. parliament.
11 G. 2. c. 26. exciſe (ſpirits).
11 G. 2. c. 28. wool.
12 G. 2. c. 13. attorney, county court.
12 G. 2. c. 21. wool.
12 G. 2. c. 25. leather.
12 G. 2. c. 26. exciſe (plate).
12 G. 2. c. 28. gaming.
12 G. 2. c. 29. bridges, churchwardens, conſtable, county rate, gaol, treaſurer.
13 G. 2. c. 8. ſervants.
13 G. 2. c. 17. apprentices.
13 G. 2. c. 18. certiorari, county rate.
13 G. 2. c. 19. gaming.
13 G. 2. c. 21. coalpits.
14 G. 2. c. 6. cattle, ſheep.
14 G. 2. c. 33. bridges, county rate, houſe of correction.
14 G. 2. c. 35. wool.
14 G. 2. c. 42. highways.
15 G. 2. c. 2. highways.
15 G. 2. c. 20. exciſe (wire).
15 G. 2. c. 24. houſe of correction.
15 G. 2. c. 25. exciſe (ſpirits).
15 G. 2. c. 27. wool.
15 & 16 G. 2. c. 28. coin.
15 & 16 G. 2. c. 30. lunaticks.
15 & 16 G. 2. c. 32. gunpowder.
15 & 16 G. 2. c. 33. bent.
15 & 16 G. 2. c. 34. cattle, ſheep.
16 G. 2. c. 8. alehouſes, exciſe (ſpirits).
16 G. 2. c. 15. tranſportation.
16 G. 2. c. 18. juſtices.
16 G. 2. c. 26. ſtamps.
16 G. 2. c. 29. highways.
16 G. 2. c. 31. eſcape, tranſportation.
17 G. 2. c. 3. poor.
17 G. 2. c. 5. introduction, county rate, houſe of correction, lunaticks, poor, ſeamen, wool, vagrants.
17 G. 2. c. 8. butter.
17 G. 2. c. 17. exciſe (ſpirits).
17 G. 2. c. 30. linen.
17 G. 2. c. 37. poor.
17 G. 2. c. 38. poor.
17 G. 2. c. 39. treaſon.
17 G. 2. c. 40. ſtores.
18 G. 2. c. 9. exciſe (ale).
18 G. 2. c. 15. phyſicians.
18 G. 2. c. 20. juſtices.
18 G. 2. c. 22. apprentices.
18 G. 2. c. 26. exciſe (coffee).
18 G. 2. c. 27. linen.
18 G. 2. c. 28. exciſe.
18 G. 2. c. 33. highways.
18 G. 2. c. 34. gaming.
18 G. 2. c. 36. cambrick.
19 G. 2. c. 12. exciſe (glaſs, ſpirits.)
19 G. 2. c. 21. ſeamen, ſoldiers, ſwearing.
19 G. 2. c. 22. rivers.
19 G. 2. c. 32. bankrupt.
19 G. 2. c. 34. exciſe, wool.
20 G. 2. c. 3. windows.
20 G. 2. c. 19. apprentices, ſervants.
20 G. 2. c. 20. exciſe (coaches).
20 G. 2. c. 30. treaſon.
20 G. 2. c. 32. burglary.
20 G. 2. c. 37. ſheriff.
20 G. 2. c. 42. introduction.
20 G. 2. c. 45. apprentices.
20 G. 2. c. 52. pardon, buggery, burning, coin, homicide, bankrupt.
21 G. 2. c. 10. poor, windows.
21 G. 2. c. 14. exciſe (coffee).
21 G. 2. c. 18. carrier.
21 G. 2. c. 26. cambrick.
21 G. 2. c. 28. highways.
21 G. 2. c. 31. debtors.
22 G. 2. c. 24. robbery.
22 G. 2. c. 27. ſervants.

A TABLE of the STATUTES.

22 G. 2. c. 33. alehouſes, blaſphemy, buggery, burning, homicide, ſeamen.
22 G. 2. c. 36. exciſe (wire).
22 G. 2. c. 38. gunpowder.
22 G. 2. c. 44. ſeamen, ſoldiers, apprentices.
22 G. 2. c. 46. introduction, attorney, clerk of the peace, oaths, bread, hundred, ſeſſions.
23 G. 2. c. 11. perjury.
23 G. 2. c. 13. foreign ſervice, ſervants.
23 G. 2. c. 21. exciſe (candles, ſoap, ſtarch).
23 G. 2. c. 26. exciſe, turnips.
24 G. 2. c. 8. thames.
24 G. 2. c. 18. jurors.
24 G. 2. c. 40. alehouſes, exciſe (coffee, hops, ſpirits), houſe of correction, poor.
24 G. 2. c. 41. tobacco.
24 G. 2. c. 43. highways.
24 G. 2. c. 44. arreſt, conſtable, juſtices.
24 G. 2. c. 45. larceny, rivers, ſhips.
24 G. 2. c. 55. arreſt, commitment, juſtices.
24 G. 2. c. 57. bankrupt.
25 G. 2. c. 10. black lead.
25 G. 2. c. 29. coroner, county rate.
25 G. 2. c. 36. burglary, county rate, evidence, felony, gaming, larceny.
25 G. 2. c. 37. homicide.
26 G. 2. c. 1. exciſe (ale, ſpirits.)
26 G. 2. c. 2. game.
26 G. 2. c. 3. exciſe (ſalt).
26 G. 2. c. 6. plague.
26 G. 2. c. 11. wool.
26 G. 2. c. 13. exciſe (ſpirits), poſt, tobacco, alehouſes.
26 G. 2, c. 14. juſtices.
26 G. 2. c. 19. county rate, ſhips, wreck.
26 G. 2. c. 24. popery.
26 G. 2. c. 27. baſtards, juſtices, poor.
26 G. 2. c. 28. highways.
26 G. 2. c. 30. highways.
26 G. 2. c. 31. alehouſes.
26 G. 2. c. 32. exciſe (ſalt, ſoap, ſtarch).
26 G. 2. c. 33. marriage, poor, women.
26 G. 2. c. 34. vagrants.
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27 G. 2. c. 7. clocks.
27 G. 2. c. 15. black act.
27 G. 2. c. 16. apprentices, highways, juſtices.
27 G. 2. c. 20. introduction, conſtable, diſtreſs, tithes.
28 G. 2. c. 3. oaths, office.
28 G. 2. c. 10. popery.
28 G. 2. c. 12. game.
28 G. 2. c. 13. debtors.
28 G. 2. c. 14. herring fiſhery.
28 G. 2. c. 17. highways.
28 G. 2. c. 19. alehouſes, burning, apprentices, exciſe (ſpirits), game.
29 G. 2. c. 12. alehouſes, gaol.
29 G. 2. c. 13. ſtamps.
29 G. 2. c. 14. exciſe (plate).
29 G. 2. c. 17. foreign ſervice.
29 G. 2. c. 19. jurors.
29 G. 2. c. 30. acceſſary, larceny.
29 G. 2. c. 31. infants, lunaticks.
29 G. 2. c. 33. ſervants.
29 G. 2. c. 36. wood.
30 G. 2. c. 12. ſervants.
30 G. 2. c. 19. annuities, ſtamps, wine.
30 G. 2. c. 22. highways.
30 G. 2. c. 24. cheat, gaming, larceny.
30 G. 2. c. 25. churchwardens, conſtable, county rate, militia, parliament.
30 G. 2. c. 28. highways.

FINIS.

Ex. Y. a. a.

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